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Official Report (Hansard) Daily Edition

Procedural Affairs Committee
Proceedings against Member for
Huron-Middlesex (Mr. Riddell)

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Second Session, 31st Parliament
Thursday, April 27, 1978

Speaker: Honourable John E. Stokes
Clerk: Roderick Lewis, QC

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Sterling, N. W. (Carleton-Grenville PC)
Taylor, J. A. (Prince Edward-Lennox PC)

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LEGISLATURE OF ONTARIO

THURSDAY, APRIL 27, 1978

The committee met at 10:10 a.m.

PROCEEDINGS AGAINST MEMBER FOR HURON-MIDDLESEX (MR. RIDDELL)

Mr. Chairman: We have before us this morning a matter of privilege that has been raised by Mr. Riddell and referred to us by the House. If I may, I'll briefly run through the procedures that you will be using this morning, and I should point out to the members of the committee and those present that we are in a somewhat unique situation and so for precedents and for reference we had to do some research, basically from Sir Erskine May on the British House.

I will point out two things for the members' consideration before we proceed. One —though it is not commonly known, I guess —is that in this House members of a committee may, of course, speak and ask questions and what not. The matter of other members of the House participating in committee sessions is at the pleasure of that committee. Strictly speaking, in formal terms, members of the committee will decide under normal circumstances whether any other member of the House may participate. Frankly, we all admit that in practice that has been so abused that there is rarely a motion any more and it is generally assumed that only at the point of vote where there is substitution allowed do you introduce a formal written motion.

I would also point out to you that in the terms of reference for this committee, no substitution is allowed. So in dealing with the rules of this House, and the precedents that I could find in the House of Lords when it sits in a formal hearing such as this one, it is the practice there that all questions are put to any witnesses by the chairman and, in fact, they are done through the chair as we would normally do. So it is the opinion of this chair that members of the committee will be allowed to ask questions as we normally would, but I would ask that they be put through the chair instead of in cross examination. That is no problem and I see no need that the questions be written or put by a counsel. I think it is generally understood that our counsel will lead the questioning and then if there are any matters that members of the committee choose to pursue, then they are quite free to do so. Those are the mechanisms that we will use.

Are there any questions on that? I should point out, for example, that the chair will then only recognize formal members of this committee to speak. So even though other members of the House may wish to come and see what is going on, they will not be recognized by the chair. Any questions or problems with that?

Mr. Bolan: I have one question, Mr. Chairman. That is a clarification of your remark with respect to questioning by members of the committee and specifically the use of your words "cross examine." Surely it is not the ruling of the chair that members of the committee will not be entitled to cross examine whichever witnesses are appearing.

Mr. Chairman: No.

Mr. Bolan: Okay.

Mr. Cunningham: Mr. Chairman, if I may as a member of the Legislature—

Mr. Chairman: No, I am sorry. The chair just made a ruling that we will recognize members of this committee and no other members of the House, unless I get a directive opposite. No other members of the House will be recognized for purposes of discussion or questioning.

Mr. Bolan: Before we get under way, there are two points. The first point is that counsel for a member of the House has risen to address the chair and the chair has ruled that he cannot address the chair. I would like to know the reason why you are refusing counsel for a member of this House to address this chair on what might very well turn out to be an extremely important committee to deal with a very important matter, to deal, in fact, with privileges of members of this House.

[10:15]

Mr. Chairman: I would simply point out to you that I didn't refuse to hear anybody. I am pointing out to you at this point in time that I will recognize members of the committee who choose to speak and then, of course, the committee will call witnesses and

has the right to enter into dialogue with whatever witnesses are there, and I would guess that this committee would be prepared to give considerable latitude to that. But at this point in our proceedings, I am hearing and recognizing members of the committee only.

Mr. Bolan: Well at what point will you hear and recognize counsel for Mr. Riddell?

Mr. Chairman: When the committee calls that person.

Mr. Bolan: And when will that be done?

Mr. Chairman: As soon as we get through this, we'll call him.

Mr. Bolan: What about members of the Legislature?

Mr. Chairman: Members of the Legislature will not be recognized unless they are members of this committee.

Mr. Bolan: I would challenge that ruling. In fact, I would move that at this stage the regular procedure be followed—namely, that members of the Legislature who are not members of the committee may ask questions and address the chair but not move motions or votes; and I would so make that motion at this time.

Mr. Chairman: Could I ask you to be careful of your wording? The rules of the House are specific and the rules of the House are that members of the committee may participate in any committee meeting but other members do so at the pleasure of the committee. So, for example, if you want to give to other members of this House the privilege of speaking and debating during the course of these things, a simple motion to that effect would accomplish what you're after. You would simply move that as a member—

Mr. Bolan: That's exactly what I've done.

Mr. Chairman: Yes.

Mr. Bolan: That's precisely what I've done through my motion.

Mr. Chairman: You have a challenge of the chair's ruling, and I think it's rather explicit: the chair has ruled that, according to the rules of this House and the precedents that we could find in the British Parliament, only members of this committee in this instance may participate in the debate. Mr. Bolan has challenged that ruling, and I see no further discussion—

Mr. MacDonald: Mr. Chairman, may I just speak to that. I think you are correct that it is the right of a committee to decide whether other members can participate in a committee's proeedings. Am I correct in saying that's your interpretation of the rules?

Mr. Chairman: Under normal standing committees of the House, yes, that's the way it goes.

Mr. MacDonald: This is a standing committee of the House; we've been named a select committee whereas we are a kind of hybrid and that, quite frankly, puzzles me, I don't know why we were called the select committee when we are a standing comittee. But assuming that we are a standing committee, it is the right of the committee to decide whether or not other members of the House will participate. If the committee members decide there should not be others, then it is the right of the committee to so decide.

I think we've got a peculiar kind of situation here. It's really a quasi-judicial court proceeding and it's a matter of whether or not under these circumstances, when you are not just generally inquiring, everybody should have a right to participate—all 118 or 115 or whatever who are not on the committee could have the right to come in and make the committee inoperative. I would just like to draw that to the attention of the other members of the committee.

Mr. Chairman: My prime concern is this: the rules of the House on this committee are explicit, no substitution. It would be my concern, since you are dealing with what I consider to be a very important matter, that any variation from that would be somewhat awkward. As an example, having heard this matter thoroughly and having violated clearly what is a written rule of the House concerning this particular committee, the deliberations of the committee could be brought into question.

I would not like to see our deliberations on this or any other matter of this kind brought into question on a simple technicality—that we allow substitution where the rules explicitly deny substitution on this committee only. It is the only committee of the House now functioning, if we go through with this procedure, in a somewhat unique way. We have no precedent in this House for this kind of a proceeding; not specifically. We find instances where we were close, but not exactly.

Mike, did you want to sum up?

Mr. Bolan: Yes, just one other point, Mr. Chairman. My concern is that every member's priviliges are a stake here. That being the case, I think the general custom of the House, the general procedure which has been accepted by members in committee, is that all members of the House can ask questions, but again only those members who are appointed to this particular committee can move motions and can vote. I see no reason why at this

juncture in time we should depart from a custom which has been clearly established.

In terms of technicality, Mr. Chairman, you may be right. However, I still say that we have to look at the way custom has prevailed. We always refer to custom when we are talking about Westminster and when we are talking about what goes on in other parliaments. What goes on in this particular parliament is that, generally speaking, it is the custom that all members of the Legislature can partake in questions, particularly more so in this instance where, as I say, every member's privileges are at stake here technically. That being the case, I think that every member should have the right to participate in the manner in which I have suggested.

Mr. J. A. Taylor: Mr. Chairman, may I just comment on that? I appreciate Mr. MacDonald's concern that the deliberations of this committee could bog down if we have a parade of members who, as of right, have a full right to participate in the proceedings. As I understand your directive, you are not saying that members of the Legislature will not have the opportunity to participate but that participation will be subject to a ruling of this committee permitting that member to engage in the debate or in the questioning. I would certainly support your ruling on that.

I think that as members who are not members of the committee but members of the Legislature appear before this committee and indicate to you that they wish to participate in the debate, then the committee can rule on those requests as they are put to the chair. I think that way you can keep control of the proceedings and they will remain in the hands of the committee. I think you have enunciated the rules of the House, and I think what is being asked for now is a deviation from those rules. I would certainly support your ruling, Mr. Chairman.

Mr. Bolan: This is by way of a question to Mr. Taylor: What you are saying, Jim, is that it is only after a member asks the chairman whether or not he can ask questions that the chairman will then decide whether he will allow him to ask questions? Is that right?

Mr. J. A. Taylor: The committee will decide. If a member of the Legislature who is not a member of this committee indicates to the chairman that he would like an opportunity to address the committee or to ask a question, then the chairman presumably would put that matter to the committee and the committee would decide whether he would be permitted to engage in the deliberations.

Mr. Bolan: What is the difference between that—

Mr. J. A. Taylor: What you are saying is that there should be a motion which would give carte blanche the right of every member of the Legislature to parade into this committee and to participate fully in the deliberations, which may overwhelm the committee. I think that is the concern of Mr. MacDonald, that the proceedings could then get out of hand. Maybe Mr. MacDonald could correct me if I don't assess his concern properly.

Mr. Chairman: If I could clarify this, in researching this with the clerk it is clear that in this House on any committee, no matter what it is, formally, strictly speaking, only members of that committee may participate in the debate. It has been the practice in a number of committees to ignore that to the extent where it is virtually assumed that if he is a member anybody can walk in the door and sit down to jump in.

In this committee my ruling is simply this, that there is no substitution allowed, that I would not recognize other members of the House, or anyone else for that matter, other than members of the committee. The option remains. Should a member of this committee request that someone else be heard, the question would be put in this form: "Should other members of the House be heard?" The committee could then vote on that and it would be the committee's prerogative to do that.

I point out to you that in my personal view you're in hot water there, but that's the prerogative of the committee and the chair would have to recognize a motion from a member of the committee, as I have from Mr. Bolan, which, in effect, does much the same thing.

Mr. MacDonald: Just in order to avoid future confusion on the thing, I understood your ruling that for the hearings of this committee no member of the Legislature other than members of this committee could participate. The slight variation that Mr. Taylor has brought in is that, at any point, five minutes from now, 10 minutes from now, 45 minutes from now, an hour from now, if somebody wants to come in, they make that request. I had assumed your ruling was that it was out, period.

Mr. Chairman: It is out, period, but I would have to recognize that any member of this committee could move a motion at any time and the appropriate one in this instance would be something like: "Should other members of the House be heard?"

Mr. MacDonald: Okay.

Mr. Chairman: The chair would have to recognize that and the committee would then vote on it.

Mr. Bolan: What criteria will you use, or what criteria will the committee use, to determine whether or not a member, other than the ones who are on the committee, will be entitled to speak if we are to follow the hooker which Mr. Taylor has thrown into this? I agree with that, but we have to have some criteria, we have to have some kind of a guide or some kind of a standard that's going to determine when a member will be allowed to come to this committee and say something, other than the ones who are on the committee.

Mr. MacDonald: The point of my comment was that if a ruling was made at the outset that only members of this committee can participate in the committee, I would hope that ruling would stand and we wouldn't have to refight the thing every 15 minutes throughout the proceedings of the committee. I would hope that Mr. Bolan and his colleagues here feel they can speak competently on behalf of all the other Liberals. I hope to do that on behalf of the NDP.

Mr. Bolan: The inference which I can draw from what Mr. MacDonald is saying and what the chair is saying is that, sure, an individual member can approach the chair and ask to be heard, but he won't be heard. That, basically, is what you're saying.

Mr. Chairman: He won't be heard unless a member of this committee moves a motion saying that he should be heard. Are you ready for the vote? The chair has made a ruling that members of this committee will be acknowledged and no others. Mr. Bolan has challenged that ruling.

All those who would support the ruling of the chair please signify.

All those opposed will please signify.

Motion agreed to.

Mr. Chairman: With some advice from counsel, Mr. Kellock, whom we have retained in this matter, I think we can proceed this morning. Mr. Kellock has invited several individuals who will appear before the committee. We have a list of them. They are: Mr. Jack Riddell, MPP; Lennox MacLean, Barry Chercover; John McNamee; Mr. Robert White from the UAW; Lorna J. Moses; Frances Piercey; Al Seymour; and the law firm of MacLean and Chercover.

I believe that most of you are here and I believe I should probably introduce the members of the committee: Mr. J. A. Taylor, Mr. Sterling, Mr. Grande, Mr. MacDonald, Mr. Haggerty, Mr. Bolan, and my name is Mike Breaugh. This is Mr. Kellock, who is our counsel.

I should also point out that on the advice of our solicitor we will be asking those who have been invited here this morning to appear as witnesses before the committee to do so under oath. You'll find this in the Legislative Assembly Act. If you've got it with you, it's on page 33. I think we use the simple form two which is there. Mr. Kellock, would you like to call the first witness, please?

Mr. Kellock: Thank you, Mr. Chairman. Before doing that, and in order to perhaps shorten the proceedings, I have discussed this morning a draft statement of facts with Mr. Bullbrook, who I understand is here on behalf of the plaintiffs in the intended libel action on behalf of the applicant in the proceedings before the Ontario Labour Relations Board, and I presume on his own behalf. If it would be satisfactory I can read the statement that's been agreed on, and if it's still agreed when I finish reading it perhaps we can have it retyped and distributed among the members and it might save us some time.

[10:30]

Mr. Bolan: Counsel for one of our members would like to address the chair at this time. Is there any reason in the world why this can't be done now?

Mr. Chairman: Not if you have a motion that he be heard at this time, no.

Mr. Bolan: I move that we now hear counsel for Mr. Riddell.

Mr. Chairman: We have a motion to hear counsel for Mr. Riddell. Any comments from the members?

Mr. J. A. Taylor: Just this, Mr. Chairman, I understand that the substance of counsel is to request an adjournment of the proceedings and if that's to be meaningful then I would assume that type of a request should be brought forward now, not later.

Mr. MacDonald: My only comment is that we're acting under the guidance of our counsel. If our counsel is aware that this is what it is, surely the first person to be called, if he deems it to be appropriate, will be Mr. Bullbrook?

Mr. Bolan: Surely the whole issue can be avoided if a motion is passed which would allow Mr. Bullbrook, who is counsel for Mr. Riddell, to stand up and to explain to this committee why he is requesting an adjournment? Surely we don't have to put people under oath for that?

Mr. MacDonald: May I ask our counsel this question: Are you aware that this is what Mr. Bullbrook wants to raise?

Mr. Kellock: I am.

Mr. MacDonald: Have you any objection that he should be the first witness called? The chair has just asked you to call witnesses.

Mr. Kellock: It's not for me to object as counsel to committee. I am aware that Mr. Bullbrook wants to put some submissions to the committee with respect to whether or not this inquiry should proceed this morning.

Mr. MacDonald: Do you feel it is appropriate that they should be heard now?

Mr. Kellock: Certainly. It's certainly not inappropriate.

Mr. MacDonald: Okay, I'm willing to abide by it, but it seems to me the chair has asked counsel to carry on. If counsel feels that the first person we should hear from is Mr. Bullbrook, we'll hear from Mr. Bullbrook.

Mr. Chairman: Okay. Mr. Bolan has moved that Mr. Bullbrook be heard by the committee. Any further discussion on that matter?

Mr. Sterling: I was just wondering, as long as this particular submission by him relates to the adjournment of the proceedings and doesn't go into the heart of it, then that's the understanding that we want to hear him on.

Mr. Chairman: Any further discussion on the matter?

Motion agreed to.

Mr. Chairman: Mr. Bullbrook, you may address the committee. It would help us if you'd come to a microphone so that Hansard could pick it up. You don't need to swear an oath.

Mr. Bullbrook: I appreciate very much, Mr. Chairman, the opportunity of addressing yourself and your colleagues. I take it that I am a witness?

Mr. Chairman: Not at this stage, no.

Mr. Bullbrook: That's what I wanted to clarify, because it's a strange dichotomy that one finds himself as a witness and counsel at the same time.

I want to assure Mr. Sterling and all members that I don't want to deal with the substance of the argument and I want to say that I don't have the right to make a motion, and I understand that, but I wanted to give some information and thoughts to the committee. To put forward such information and thoughts and submissions necessitates my commenting upon certain research that I've done, certain opinions that I've given in connection with the state of the law as I understand it, and the proceedings that my client has instructed myself and other counsel to take in connection with this matter.

In doing so, I want it understood that I am not in any way asserting an argument that might properly take place at the final conclusion of these hearings and prior to your consideration of what your report to the Legislature would be. When I was first instructed in connection with the matter, I of necessity directed my consideration to sections 37 and 38 of the Legislative Assembly Act with respect to the notice of intended action that had been served upon Mr. Riddell.

If I could digress for a moment: if I state a fact of any kind and anyone wants to take issue of the fact—and I will try not to state facts—they are free to correct me, of course.

I gave consideration to the application of sections 37 and 38, to the question of the notice of intended action; and in reply to the solicitors for the intended plaintiffs, I attempted to rely upon sections 37 and 38.

I want to address myself mainly to the question of section 38 because the application of section 37 would be dependent upon evidence that would be put before this committee as to the intentions of the member in doing what he did, to bring him within a series of cases that might assist him to say that what he did was an extension of his parliamentary privilege under section 37. I really don't want to dwell upon that, as I didn't dwell upon it before the Ontario Labour Relations Board because that, in effect, is dependent in my submission upon a state of facts which go to the question of his intention and, in effect: "Was he acting as a member; was he acting in some of the circumstances within the parliamentary precincts as defined by precedent of honourable Speakers of this assembly?" But my main concern throughout has been the application of section 38 to both the notice of intended action with respect to the libel and slander matter and the notice of application for consent to prosecute under section 56 of the Labour Relations Act.

I had rendered my opinion, for what it was worth, to my client, that the notice of intended action was clearly a breach of his privilege under section 38 and that the notice of application to the labour relations board was probably a breach of section 38; and I will subsequently explain, if I might, why the second action created concern on my part. My client subsequently rose and asserted his privilege in the House; and I want to say on his behalf that his so rising

was not with any purpose of punition but was because of the fact that if a privilege had been broken, he felt an obligation not only to himself in the circumstances but to the assembly itself and subsequent assemblies that might exist under the terms of the present section 38.

We then were called upon to appear before the labour relations board, and Mr. MacLean with great skill argued the technical aspects of his submissions and I argued on behalf of my client.

The problem that will face this committee—and it hasn't been faced before, and I would like to underline in red ink that it hasn't been faced before—is that you have a separate statute and you don't, in my respectful submission, have precedent on a judicial interpretation of that statute which would help you. I want it to be readily understood that you don't need it and even if there were you are not bound by it.

I totally recognize the fact that if there were a judicial interpretation of this statute, you can disagree with it if you want to and that if you constitute yourself under section 45 as a court of record—the highest court, the highest tribunal to decide what is meant by the section and what results will flow from your own interpretation and the interpretation of the assembly—you are that court.

I'm suggesting to you that it would be almost bordering on being foolhardy not to avail yourselves of the opportunity of at least looking at what the highest tribunal—whose function is judicial interpretation—might say with respect to the assertions made by your colleague. And the problem with it is that the body of precedent that is available to us, in my submission, relates primarily to the Parliamentary Privilege Act of 1770 and article 1 of that statute removed from the members of the parliaments of the United Kingdom at that time the immunity from the commencement of civil proceedings that had existed up to that time. So, up to 1770 you had the situation that members of the Houses of Parliament of the United Kingdom were not subject to the commencement of civil proceedings during session and during the time therein defined. The Parliament of the United Kingdom in its wisdom said, "We remove from ourselves that immunity."

They went on, and in article 2 of the same statute—and I think I've given citation to counsel before; it's 10, George III, chapter 50—they said: "However, notwithstanding the fact that we have removed from ourselves that immunity, we retain to ourselves the immunity from arrest or imprisonment."

I then have to relate to the British North America Act. The British North America Act was then passed and it vested within the Parliament of Canada the right to pass legislation within its constitutional purview and jurisdiction. It also vested, within the assemblies and legislatures of the individual provinces, the right to enact legislation within their respective constitutional jurisdiction.

I'm going to assert, as a matter of law, that the Legislative Assembly of Ontario has the constitutional right to enact legislation dealing with its own rights and privileges; I assert that as a matter of law.

What happened was that the Parliament of Canada, in its wisdom, decided that it would enact a statute that said that the members of the senate, of the House of Commons of Canada, would enjoy all the privileges and rights that inured to the benefit of the members of the Houses of Parliament of the United Kingdom at the time of the enactment of the British North America Act. So that the members of the House of Commons, as I understand the law, are subject to the rights and privileges that existed and obtained with respect to the members of the Houses of Parliament of the United Kingdom in 1867. And I am submitting that those are, to a great extent, defined in the Parliamentary Privilege Act of 1770 and the body of law that developed thereafter and to this date.

May I take a glass of water?

Mr. Chairman: Oh I think so.

Mr. White: Mr. Chairman, can I raise a point here—

Mr. Chairman: No, I—

Mr. White: I have been asked to appear before the committee and I was given a time for this morning. Mr. Bullbrook is now raising a technical point, and if I am not going to be heard this morning I would like to know what time I—

Mr. Chairman: If it's a matter of convenience, then I'd ask a member of the committee to pick up the point and raise it with the chair.

Mr. MacDonald: The only point I want to raise is that I assume that what Mr. Bullbrook is getting to is that this should be adjourned because he wants a decision to be made in the courts, as a guide to us.

[10:45]

Mr. Bullbrook: May I respond in this respect: I don't want to hold you up unduly but in fairness to you I have to put this

forward. You are going to have to make a decision as to whether you will adjourn, and in making that decision I thought I would try to outline the technical problems involved in the whole matter.

Mr. MacDonald: I don't want to get into the detail of it, but I am persuaded from my general knowledge of the field that there is very much of a counterargument, which is perhaps embodied in Mr. Bullbrook's concession that whatever be the decision of any court, the highest court in the land, we have the right to ignore it. In other words, it is our responsibility to make the decision as to what are the rights and privileges. We don't need the guidance of any court.

Mr. Chairman: Before we argue this much further, could I just point out that the members of this committee did not exercise their right of subpoena for any witness that might be here this morning. Witnesses are here at the invitation of the committee; there is no compulsion for them to stay. If business should take them elsewhere they are quite free to go; they are under no compulsion to show up at all.

We chose to go the route of inviting people to appear before the committee, rather than use a subpoena. So in my view there is no obligation for anybody to show up, to stay, or whatever. That might answer your question.

Mr. J. A. Taylor: We've agreed to hear Mr. Bullbrook's submission, presumably leading up to a request that the committee adjourn. I would suggest that we hear Mr. Bullbrook out first.

Mr. MacDonald: I would just like to serve notice that having heard Mr. Bullbrook—and I am in the situation of a layman having to deal with very heavy technical or legal detail I think there is no alternative point of view and I reserve the right to have somebody else called to give an opposing point of view.

Mr. Bullbrook: That's fine.

Mr. J. A. Taylor: I suggest that we hear Mr. Bullbrook out first and we can assess that after.

Mr. Chairman: Fair enough, we've agreed to that.

Mr. Bullbrook: I appreciate the comments of Mr. MacDonald. Of course, there's a forceful argument which I understood to be inherent in that somebody else would put the counterargument before you. I want to reinforce, if I may, that it is totally understood that you make your own decisions and nobody tells you what decisions can be made. But this is why I am going into the complexity of it. I suggest to you frankly that it would be great for the Legislature to have the judicial arm of government make a decision, since they are so ably trained to do so.

In any event, the essence of the matter is that the Legislature of Ontario in its wisdom, rather than doing what the federal Parliament did, and adopt the privileges available to members of the Houses in the United Kingdom, decided to pass its own statute. And it has passed section 38, which is the operative section that we want to address before the courts and before yourselves.

The problem that arises in connection with section 38 is the very wording of it. As I have argued before and will continue to argue, if the Legislature of Ontario intended to remove the immunity that had existed, then all the Legislature of Ontario had to do, in addressing itself to the question of its own privileges under the Legislative Assembly Act, was to put in the Legislative Assembly Act the very wording that was in the Parliamentary Privilege Act of 1770. They just had to say, in effect: "We are not immune from civil proceedings during session."

I am going to suggest to you they didn't do that; and the court has to consider that—I suggest respectfully should consider it—as this tribunal will consider it. But they went further, and it is my submission that they did take into consideration the Parliamentary Privilege Act of 1770. Because in section 38 they reserved to themselves the continued immunity almost in the very words of article 2 of the statute of 1770, "the reservation of immunity with respect to arrest and detention," arrest being the exact word, and detention and imprisonment, I suggest, being synonymous. But they went further—and I've got to confess, I've come today without volume 2 of the Revised Statutes of Ontario that contains section 38. I think I've dealt with it sufficiently that I can almost do it by heart, but in the wording, after arrest and detention, they continued with extremely broad words: "or molestation for any cause or matter whatever of a civil nature." In my respectful opinion and submission, they said that "the members are not subject to molestation"—and that's the key word, molestation—"for any cause or matter whatever of a civil nature." Those are the other two key words.

I'm going to suggest to you, sir, that what is creating problems for me in advising my client, what is creating problems for all concerned in interpreting section 38, first, does the continuation of these two processes, not just the commencement, but the necessary continuation of the processes, constitute a

molestation of any kind or matter; second, with respect to the labour relations matter, is it of a civil nature?

In fairness, I must tell you that the labour relations board decided two things:

1. That the institution of their proceedings against my client was not a molestation of his privilege—and I'm not going to argue right now whether it was or not. I just want you to know that they decided that.

2. They decided that their proceedings were quasi-criminal in nature and not civil in nature. Again, I'm not going to put forward the argument whether it was or not.

The problem I had is that I can't assist you, and I haven't been able to assist anybody, with an interpretation of the wording of molestation as it relates to this statute. There is a lot of law on what molestation is —an annoyance, an unwarranted intrusion, an interference—but there is no interpretation of what molestation is in the context of this statute. Also, the question has to be defined whether the libel and slander action is of a civil nature and, finally, the ultimate decision with respect to the labour relations matter as to whether it's civil in nature. Therefore, it's my intention, along with other counsel, to move to the highest tribunal for a judicial interpretation of section 38 in the light of the facts that obtain with respect to my client and with respect to the proceedings with which he's involved.

I have taken a long time, and it seems to be complex. I want to tell you that what I've done today is only the tip of the technical iceberg. I'm not going to go into detail, but, for example, you get the dichotomy of limitation periods obtaining with respect to the right of the citizen as opposed to the right and privileges of the member, which eventually I'm absolutely sure this assembly must come to grips with. It must come to grips with it. The fact is, I've got to handle this case, if I can put it that way, on the basis of the law as I read it and understand it.

I'll close by saying this, sir, if a member would consider an adjournment, I've undertaken to the Ontario Labour Relations Board to move as expeditiously as possible for a judicial review with respect to their matter. I also will move in connection with the other matter under the provisions of the Judicature Act. We'll do that as quickly as we can. We'll also ask for a speedy hearing by the appropriate court so that we can get back to you as quickly as possible. It won't be like the hospital situation where they were able to leave the labour relations board in the morning and have the divisional court decide it in the afternoon. I know it won't be that, but we'll move as quickly as we can in this connection.

My client wants to say this to you, if he may, through me; he wants to say that he recognizes totally that it is your function and ultimate responsibility, in connection with your report, to decide whether there has been one or more breaches of his privilege. He wants to assist. He doesn't want to be involved in this litigation but it's got to be decided, and the appropriate tribunal to give an opinion, not to bind but to give an opinion to you, is the court and those people who are trained to come to an understanding as they see it.

I want to say this to you in finality, if the Supreme Court of Ontario says that my client's privilege in one or more instances has not been breached, I am prepared to recommend to my client that he forthwith stand in the House and withdraw his claim of breach of privilege, because he is having to bear the burden of having this matter decided. He wants to have it decided in the proper fashion as far as interpretation is concerned. He doesn't in any way denigrate from your power, rights, duties and privileges yourselves, but he asks that one of your members might consider a motion at this time to adjourn pending a judicial interpretation of the meaning of the section in the context of the proceedings with which he is involved.

Mr. Chairman: Are there any questions of Mr. Bullbrook from any members of the committee?

Mr. Bolan: I just have one question, again dealing in time-frames. Have you any idea how much time we are looking at in terms of bringing this matter presumably to the divisional court?

Mr. Bullbrook: Presumably to the divisional court in connection with the labour relations matter. We're attempting, sir, if I may globalize the situation, to involve ourselves in an interpretation dealing with both the libel and slander and the labour relations matter, and that brings up again a technical question of the application of the Judicial Review Act and the Judicature Act combined. Counsel and I have spent hours together on this matter.

By the way, according to my information, the labour relations tribunal has adjourned its proceedings until May 10. The plaintiffs wouldn't be at all hurt by the adjournment of these proceedings because they, in effect, can continue with their intended action if they so wish, because if I'm successful in my argument, that's void ab initio in any event.

and if I'm not successful, then we'll just proceed pending that.

The answer to your question is I can't tell you but I can give this undertaking, that we would hope to have the necessary supportive affidavits and application before the courts by Thursday, a week today. We're not moving for a stay of proceedings. I requested a stay of proceedings, but we are not moving for a stay of proceedings and I don't want to get into the substance of that. I just might say I am content that neither the labour relations board nor any court can bring my client within section 56, and I am prepared to digest that matter on the merits before a provincial court judge, if I have to, but that's a digression.

I want to interpret the section so that the Legislature itself, in coming to grips with the section as it is interpreted, might well want to change it, and I think that is another advantage available to you; that if the court says, "Yes, the privilege exists," then you might want to eradicate the privilege; "No, it doesn't exist," then you might want to put it in.

Mr. MacDonald: Mr. Chairman, I have no question, but I have a comment.

Mr. Chairman: Could you hold and see if there are any questions?

Mr. Kellock: I have one question, Mr. Bullbrook. In view of the fact that everyone is here today and that there are two parts to this proceeding at least, one is to establish the facts and the other is to determine what the facts mean, I don't understand—perhaps other members of the committee do—why an adjournment would be of any use or necessity with respect to settling the facts this morning.

Mr. Bullbrook: Yes, and I entirely agree, Mr. Kellock. As a matter of fact, I am content with the statement of facts that counsel has given to me. I am concerned with two things that I mentioned to him previously. One is that we don't today—or I respectfully submit that this committee should not deal with the propriety of what my client said or whether, in fact, he said it, because all you are dealing with here is whether the actions were taken, not whether they were justified or not; that certainly is for another tribunal to decide.

I had given my opinion to my client that I didn't see the need for very many witnesses in this case if we could agree as to the facts. Either there was a notice of intended action served on him, together with supplementary documents, either there was a notice of application the labour relations board served upon him together with supplementary documents or there wasn't. I don't think the question of whether there was a libel is germane, whether he is guilty under section 56 is germane, so I must say that I had absolutely no objection to continuing in connection with a stipulation of the facts.

Mr. MacDonald: Mr. Chairman, I would just like to draw attention once again to what I think is a basic contradiction in Mr. Bullbrook's presentation. He acknowledges that whatever may be the decision of any court, even the highest court of the land, we need not be bound by it. We are making a decision in terms of what we believe to be the member's rights and privileges and whether or not they have been breached, and if the Legislative Assembly Act is not clear on that point we may make recommendations that it should be clarified.

I think I am correct in stating that Mr. Bullbrook has presented something of the same argument to the Labour Relations Board concerning the fact that his client was immune and the Labour Relations Board—it's irrelevant but it's interesting to me as a layman—said that he wasn't immune. That is one sort of outside judgement from a body sitting in a quasi-judicial role. I don't think we need to halt the proceedings. I think, as counsel has indicated, we should at least proceed to establish what the facts of the case are, and indeed I think we have the right to proceed and come to our decision here.

Mr. Bullbrook, in keeping with any lawyer if he's lost a case, appeals it. Mr. Justice Walsh once was asked: "Do you appeal all cases?" and he said: "No, only those I lose." Mr. Bullbrook has lost his case so far, so he's going to appeal it, presumably up to the highest court of the land. That's his right, but we have a responsibility here and I think we should proceed to the fulfilment of that responsibility.

Mr. J. A. Taylor: There's another party that's involved in these proceedings and I was wondering if counsel for that party wishes to make any response or reply to Mr. Bullbrook's request for an adjournment?

Mr. Chairman: Are you moving that some other member present be heard?

Mr. J. A. Taylor: I am moving that he be invited to be heard if he wishes to express a view on this. I think it's only fair that both parties should be heard.

Mr. Chairman: Are members in agreement with that?

Agreed.

Mr. Chairman: All right. Mr. MacLean, could you come to a microphone?

Mr. MacLean: Mr. Chairman and members of the committee, I have listened with some interest to the remarks made by Mr. Bullbrook. I must say that it looks like we are going to go to court anyway, so I have no particular opposition to Mr. Bullbrook's suggestion. I might say it has probably become abundantly clear to the members of this committee that the law in this area is characterized by a great imprecision. It's very ill defined, so it may well be that this committee could be assisted by a judicial ruling. As I say, we appear to be going there anyway, so we have no particular opposition to what Mr. Bullbrook is suggesting.

I don't think, gentlemen, that I at this time prefer to go into a dissertation on the law. I have quite a legal brief, the same brief that I presented to the labour relations board, and I can, at the opportune time, take you gentlemen through it. I think that is all I have to say at this time, subject to any questions any of the members of the committee may wish to put to me. Thank you, gentlemen.

Mr. Chairman: Questions?

Mr. Kellock: The same questions proclaim that and I take it there's no objection to the proceeding, just to establish the facts so we have that on the record?

Mr. MacLean: No, I have no objection, Mr. Kellock.

Mr. Chairman: Any other questions from committee members? Mr. Sterling?

Mr. Sterling: Mr. MacLean, there was a statement of facts, of which I don't believe I have received a copy yet. Do you have any objection to that statement of facts?

Mr. MacLean: I spoke to Mr. Kellock earlier and there were two matters I had some reservations about. I think Mr. Kellock was going to review those and I think we can reach agreement on those facts.

Mr. Chairman: Further questions? Thank you, Mr. MacLean.

Mr. MacLean: Thank you, Mr. Chairman.

Mr. Chairman: The chair is open to motions. Mr. Taylor.

Mr. J. A. Taylor: Mr. Chairman, I would move that we proceed with the deliberations of this committee.

Mr. Chairman: A motion to proceed. Any discussion?

Mr. Bolan: I would like to speak against the motion to proceed with the deliberations at this time. The member is seeking redress or is seeking an interpretation in a court of law. That is a remedy which is open to him. We must bear in mind that we're in a very grey area. I, for one, would certainly welcome another body's interpretation of these words which we will have to put an interpretation on ourselves. That being the case, I would certainly appreciate a judicial review of the law, as it applies to these particular matters.

I've always been of the opinion that a person should exhaust whatever remedies he has in a court of law, if that's available to him. In this particular case, the availability is there. What we are saying to Mr. Riddell, if we say, "No, we must proceed today," is, "You do not have the right to seek a judicial interpretation of that section."

As a member of the Legislature, I am strongly opposed to not having the right to go to court and get a judicial interpretation. This is a decision he has made; his counsel has made a presentation and, as I say, he should be given that opportunity.

I do not support Mr. Taylor's motion but rather suggest that an adjournment be granted until such time as the proposal put forward by counsel for Mr. Riddell has been exhausted.

Mr. Chairman: Further discussion? Mr. MacDonald.

Mr. MacDonald: Mr. Chairman, I would support the motion that we proceed. I would do so on this basis. On this issue, we are the highest court in the land. At least we have the right to make recommendations to the Legislature, which it then implements or changes. I think we should fulfil our obligation to come to conclusions on this matter.

As Mr. Bolan has indicated, Mr. Riddell and his counsel have every right to appeal this to the courts and if the courts are at variance with our decision, and indeed, if they state that the act as now spelled out is vague and open to another interpretation, then there is an obligation on the part of this committee to the Legislature to change the law to what they feel it should be. So whatever happens outside in an appeal to another court is irrelevant to our proceedings and our obligation to come to a decision here.

Mr. Chairman: Further discussion on the matter? Mr. Sterling.

Mr. Sterling: I would like to know, what is the practical effect of us coming to a decision either way on this matter with regard to the civil litigation going on?

Mr. Chairman: If I could offer my comments in that regard, I would simply point out the motion that referred this matter before this committee.

We are not dealing with anyone's rights whatsoever. We are dealing with the matter of a member's privilege. We have been directed by the House to deal with that matter of privilege and you might give someone in the House cause to say we are derelict in our duty should we not proceed with this matter.

As everyone acknowledges, we are clearly into territory no one has been into before so we're setting a precedent. But you have been given direction by the House and it is specific. It is not questioning any other action that might be before the courts but simply the matter of a member's privilege and it is specific to the section of the Legislative Assembly Act as well, only under section 38. That's the direction of the House to this committee. It's now your decision. Will you proceed or not?

Mr. Sterling: Mr. Chairman, I am having a difficult time with this matter in that the member who raised the privilege is now asking us to defer our decision on it. Unless he had a reversal since the time he raised it he has come to us today wanting to bring this matter of privilege on; I don't know why he didn't raise it at a later date.

Mr. Chairman: If I could just point this out to you. The rules of the House are quite clear on this aspect of it. If a member feels his privileges have been breached, he must stand and raise the privilege at the earliest opportunity. Mr. Riddell did that.

In my view, Mr. Riddell is quite within his rights this afternoon when the House sits, to stand and withdraw his privilege, in which instance the whole matter is taken away. But in my mind it would certainly muddle things if he withdrew it this afternoon and decided after this litigation had been dealt with to raise it again. I am not sure whether that's quite within the ball park or not, the House would have to rule on that. My intuition would say no. And if he wants the matter of privilege dealt with, he has done all he has to do according to the rules of the House. It is now before this committee and we are obliged to carry out the direction of the House as quickly and as expeditiously as possible and that's all subject to the desire of this committee.

Any further discussion on this matter?

Mr. Bolan: Yes, one or two comments. We have to remember that counsel on the other side has agreed to this requested adjournment. The other thing to remember is this is the member who has raised the question of his privilege, who has come to this committee today and he says "Okay, fine, I have raised the privilege but I'm asking you put over deliberation on whether my privilege has been breached until such time as another court has dealt with it."

Mr. J. A. Taylor: Surely, Mr. Chairman, the determination of whether a privilege of a member of the House has been breached or not is one for this committee. I don't think it's the function of this committee to substitute a court in its stead in this matter.

We're not here to determine the merits of the legal proceedings in the courts or before the Ontario Labour Relations Boad. We're here to determine whether or not the privileges of a member of this Legislature have been breached. We are undoubtedly going to have to interpret this section of the Legislative Assembly Act. We may have to indicate what our views are, in terms of the spirit of that enactment, and that will relate to the matter we have been charged with in terms of our responsibility to defer that determination until after a court hearing or to await a court hearing in order to substitute a court's decision for our decision, I think would be an abdication of our responsibility. Therefore, I feel that we should proceed.

[11:15]

Mr. Chairman: Further debate in the matter?

Those in favour of the motion, by Mr. Taylor to proceed?

Those opposed?

We shall proceed. Mr. Kellock?

Mr. Kellock: May I read the statement of facts and if it is still agreed upon, we can have it typed and distributed to members of the committee and this may serve to shorten these proceedings considerably.

"1. On motion made by Mr. Nixon, seconded by Mr. Worton,

" 'Ordered, that the matter of the service of documents pursuant to the Libel and Slander Act and the Labour Relations Act on the member for Huron-Middlesex, contrary to section 38 of the Legislative Assembly Act, RSO 1970, chapter 240 stand referred to the standing committee on procedural affairs, for which inquiry the committee may be empowered to engage counsel and which proceeding shall be transcribed and printed by Hansard in the format used for the House.

" 'The committee shall be empowered to call for persons, papers and things and to examine the witnesses under oath, pursuant to section 35 of the Legislative Assembly Act, and for which purpose the assembly doth command and compel the attendance before the said select committee of such persons and the production of such papers and things as

the committee may deem necessary for any of its proceedings and deliberations for which the Honourable the Speaker may issue his warrant or warrants.'

"On Thursday, March 16, 1978, a notice of action pursuant to the Libel and Slander Act, RSO 1970, chapter 243, styled as follows:

"In the Supreme Court of Ontario.

In the matter of the Libel and Slander Act, RSO 1970, chapter 243 as amended;

and in the matter of an intended action between Robert White, Al Seymour, Lorna J. Moses and Frances Piercey, on their own behalf, as officers and members of the International Union of United Automobile, Aerospace and Agricultural Implement Workers of America, and Local 1620 thereof, and on behalf of all members of the International Union of the United Automobile Aerospace and Agricultural Implement Workers of America (UAW) in Canada and its Local 1620 in Ontario plaintiffs, and Jack Riddell, defendant,

was delivered by John McNamee to the secretary to Jack Riddell at his office in the main Legislative Building (122 northwest).

"2. On Thursday, March 16, 1978, the International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW), launched an application to the Ontario Labour Relations Board for consent to institute a prosecution against, inter alia, Jack Riddell, and notice of that application was mailed by the registrar of the Ontario Labour Relations Board to Jack Riddell at Queen's Park, Toronto, Ontario, on March 20, 1978, and received at Mr. Riddell's office shortly thereafter.

"3. The notice described in paragraph 1 was delivered, and the application for consent to prosecute, described in paragraph 2, was launched, by Lennox A. MacLean, a barrister and solicitor, carrying on practice in partnership under the firm name of MacLean and Chercover, on the instructions of that firm's clients, the plaintiffs in the intended action for libel and slander in the case of the notice of action, and the applicant before the Ontario Labour Relations Board with respect to the application for consent to prosecute.

"4. The events herein described, occurred during the period described by section 38 of the Legislative Assembly Act"—and I digress to say that that simply means 20 days before or 20 days after or during the session—"and the defendant in the intended action for libel and slander and one of the respondents to the application for consent to prosecute, Jack Riddell, was a member of that assembly.

"5. The delivery of the notice under the Libel and Slander Act, the application to the Ontario Labour Relations Board and the notice of that application were delivered,, launched and mailed without the permission or consent of Jack Riddell or the Speaker."

It is my understanding that is satisfactory to Mr. Bullbrook and to Mr. MacLean, and that being the case—

Mr. Bullbrook: I don't know where I stand. Am I able to address anybody, because I do now have an additional concern to express in connection with the statement of facts, which I think we can agree upon but—

Mr. Kellock: I'm sorry. I don't want to create the impression that these are the only facts.

Mr. Bullbrook: Oh good, that's fine.

Mr. MacDonald: Mr. Chairman, I have just one question. When Mr. MacLean spoke to us a moment ago he said there were one or two points that he had certain reservations on.

Mr. Bullbrook: I have amended them since.

Mr. MacDonald: You amended them?

Mr. Bullbrook: As a result of a discussion with Mr. MacLean.

Mr. MacDonald: Very good, thank you.

Mr. Bullbrook: I would like the committee to call Mr. Riddell, Mr. Chairman.

Mr. Chairman: Is that agreed?

Agreed.

Mr. Kellock: Mr. Chairman, is there an agreement on that statement of facts then?

Mr. Bullbrook: Yes, I understand that there is.

Mr. Kellock: By all interested parties?

Mr. Chairman: I apologize for the awkwardness of this procedure but I caution you again: we are attempting to do something that hasn't been done before and we are encountering a measuring of awkwardness. If it is the pleasure of the committee to once again call before the committee counsel for both sides to set whether they formally agree with this, please do so.

Mr. Kellock: I would just like the record to show whether there is an indication on the part of both counsels that they are in agreement with the facts as stated by the counsel for the committee.

Mr. Chairman: Well, to put in the record, there seems to be agreement from Mr. MacLean. Is that correct?

Mr. MacDonald: Can I have clarification on the point that Mr. Bullbrook raised? He says he accepts the facts as stated there but it doesn't necessarily include all the facts.

Mr. Kellock: No, that's right.

Mr. MacDonald: Are some of the facts omitted relevant?

Mr. Kellock: Yes, and we will have to deal with that with evidence.

Mr. Chairman: Right. So there is agreement on the facts presented but the case is being made that they are not all inclusive. Are we then prepared to proceed with witnesses? Would you like to call them?

Mr. Kellock: Mr. Riddell please.

Mr. Sterling: Do you have any extra copies of those statements of facts that we could have?

Mr. Chairman: We will have.

J. K. Riddell sworn.

Mr. Kellock: Mr. Riddell, in accordance with the statement of facts, we have heard that you are a sitting member for the riding of Huron-Middlesex in the present House, is that correct?

Mr. Riddell: That's correct.

Mr. Kellock: And your office number is No. 122 northwest. Where is that? Is it in this building?

Mr. Riddell: It's 121 northwest, not 122.

Mr. Kellock: You shouldn't have agreed to that statement of fact.

Mr. J. A. Taylor: Mr. Chairman, while that correction is being made, Mr. Riddell's counsel is with him today, as I understand it. Is it not appropriate for Mr. Bullbrook to sit with the witness if he wishes?

Mr. Chairman: Well, I would simply make this small distinction. Mr. Riddell is now giving testimony before the committee and I don't think that that requires the use of a counsel. I have no objections if he sits with him. I am just pointing out that we are attempting to make that distinction—that this isn't a court of law. This is a hearing of a committee of the House and we have called a witness and he is now giving testimony. It would not in my view be appropriate to engage in what might be normal courtroom procedures. And unless I hear some objections or motions to have Mr. Bullbrook sit with him, I would proceed.

Mr. Kellock: So your office is No. 121.

Mr. Riddell: It is 121 north wing, yes.

Mr. Kellock: And who occupies 122? Another member, or your secretary or do you know?

Mr. Riddell: I have a feeling it might be research across the hall. I'm sorry, I can't say with any degree of certainty.

Mr. Kellock: Did you, sir, have any forewarning of the delivery of the notice under the Libel and Slander Act to your office?

Mr. Riddell: No forewarning whatsoever.

Mr. Kellock: Is it correct that the notice was not delivered personally to you but was left with your secretary?

Mr. Riddell: It was given to my secretary, yes.

Mr. Kellock: And may I also take it then that you did not receive any forewarning of the delivery by mail of the notice of the application to the labour relations board?

Mr. Riddell: No forewarning whatsoever.

Mr. Chairman: Any questions from the committee? No further questions?

Mrs. Scrivener: Would Mr. Riddell like to make a statement to the committee himself on this matter?

Mr. Chairman: Would you care to take the opportunity to make a statement, Jack? You can if you like. A formal statement has been made in the House and in the directions to committee, but you are certainly at liberty to make any comments you care to.

Mr. Riddell: I don't think that I can add to any further statement that has already been made. I'm here being represented by my legal counsel, Mr. Bullbrook, and if he wishes to make further statements on my behalf, we'll leave it to him.

Mr. Chairman: Okay, that's fine. You can call your next witness.

John McNamee, sworn.

Mr. Kellock: Where do you live, Mr. McNamee?

Mr. McNamee: 280 St. George Street.

Mr. MacLean: May I sit next to the witness?

Mr. Chairman: I am going to seek the guidance of committee on this. Are there objections to having counsel sit next to the witness?

Mr. Bullbrook: I think that's appropriate, Mr. Chairman.

Mr. MacLean: Thank you, Mr. Chairman.

Mr. Kellock: I'll ask you again, sir, where do you live?

Mr. McNamee: 280 St. George Street, in Toronto.

Mr. Kellock: And you are an articled student-at-law at the present time, are you?

Mr. McNamee: Yes, I am.

Mr. Kellock: And to whom are you articled?

Mr. McNamee: Mr. Barry Chercover.

Mr. Kellock: And is Mr. Chercover Mr. MacLean's partner in the firm of MacLean and Chercover?

Mr. McNamee: Yes he is.

Mr. Kellock: Mr. McNamee, I am showing you what appears to be a Xerox copy of a notice pursuant to the Libel and Slander Act. Have you seen that document or the original of that document before?

Mr. McNamee: Yes I have.

Mr. Kellock: Would you tell the chairman and the committee the circumstances and your involvement with that document?

Mr. McNamee: Essentially I prepared this document on Mr. MacLean's instructions, presumably for his client. I didn't speak to Mr. White or anybody else from UAW—

Mr. Chairman: I'm sorry, could we get you to speak up?

Mr. McNamee: I prepared this document or the substance of this document, and I think at about 9 o'clock on Thursday, the 16th, I left it at Mr. Riddell's office with his secretary or a copy of it.

Mr. Kellock: I see, so you brought it from your downtown office up to this building, found Mr. Riddell's office, left it with his secretary and left the building. Is that what happened?

Mr. McNamee: That's essentially correct, except that I actually had it at home with me that night and served it when I came in in the morning.

Mr. Kellock: At the time you prepared the document and up until the time you left it with Mr. Riddell's secretary, were you aware of the provisions of section 38 of the Legislative Assembly Act?

Mr. McNamee: Quite frankly, no. I had never read that section.

Mr. Kellock: Were you aware that there was anything called parliamentary privilege? [11:30]

Mr. McNamee: I suppose I would have been vaguely aware of it, but quite frankly, the idea didn't enter my mind at that point. Perhaps if I explain why, it would be helpful.

Mr. Kellock: Please do.

Mr. McNamee: This document, as I understand it, is mere notice of action, it doesn't coerce anybody. My feelings with regard to that are I would have hesitated to serve the subpoena of course, but this matter struck me as a mere informational thing. As I understand it, the judicial decision at some point is to give the defendant or the proposed defendant of an action the opportunity to prepare his case.

Mr. Kellock: Mr. McNamee, I am sure that you have become more familiar with parliamentary privilege since the service of the notice than before. I'm going back to the point in time before. Were you sufficiently aware of the doctrine of parliamentary privilege to have hesitated to serve a subpoena on March 16, if Mr. MacLean had given you one to serve?

Mr. McNamee: Yes, I would have raised that.

Mr. Kellock: So you did know that members of this House had some kind of immunity from some kind of process at the time you served the document?

Mr. McNamee: I would have checked.

Mr. Kellock: My question is you knew, vaguely, that there was some kind of immunity from this kind of process?

Mr. McNamee: Not quite. I would have hesitated at that point—I would have checked the case law at that point, what the position was.

Mr. Kellock: I'm sure you would have, but my question was—

Mr. McNamee: Well, that was the answer—

Mr. Kellock: May we take it that you were aware, vaguely, that there was some kind of privilege that might be applicable and might require you to go to the books to find out about it?

Mr. McNamee: Yes, that's possible.

Mr. Kellock: Did you have anything whatever to do with the taking instructions for, or completing the documents with respect to, the labour relations board proceeding?

Mr. McNamee: No, not with the preparation of the documents or taking instructions.

Mr. Kellock: I think you told us at the beginning that you prepared the notice of action on Mr. MacLean's instructions. Did you have any contact with the clients prior to doing that?

Mr. McNamee: No.

Mr. Chairman: Questions from the committee?

Mr. Sterling.

Mr. Sterling: Were you specifically directed by Mr. MacLean to serve this document on Mr. Riddell?

Mr. McNamee: Yes I was, but I wasn't directed by him to serve it here. If you've ever served a document, it's difficult to find

people, and I assumed that he'd be here, so I served it here.

Mr. Chairman: Further questions?

Thank you, Mr. McNamee.

Would you like to call your next witness?

Mr. Kellock: I would like to call Mr. MacLean.

Mr. Bullbrook: I really recognize your problem in the hybrid committee that you head. Am I correct in understanding that Mr. Riddell's counsel does not have the right to cross examine?

Mr. Chairman: That's right. Mr. MacLean, I'm going to ask you, since you're now appearing before the committee as a witness to take the oath of witness.

Lennox A. MacLean, sworn.

Mr. Kellock: Mr. MacLean, am I correct that you are a barrister and solicitor, entitled to practise as such in the province of Ontario?

Mr. MacLean: That is correct.

Mr. Kellock: How long have you been at the bar of this province?

Mr. MacLean: Since 1957, sir.

Mr. Kellock: And are you a partner in the firm of MacLean and Chercover?

Mr. MacLean: Yes, I am.

Mr. Kellock: And that's the firm that employs Mr. McNamee, the last witness?

Mr. MacLean: That's right.

Mr. Kellock: Mr. McNamee has told us that the notice of action, a copy of which I show you, was prepared by him on your instructions, is that correct?

Mr. MacLean: That's correct.

Mr. Kellock: And he's further told the committee that it was delivered to Mr. Riddell on your instructions.

Mr. MacLean: That's correct.

Mr. Kellock: And I believe in answer to a question from one of the members of the committee, indicated that he did not receive any explicit instructions from you as to where to serve the document. Would that be correct?

Mr. MacLean: Yes, it is correct.

Mr. Kellock: Did you at any point prior to the service of the document turn your mind to where Mr. Riddell might be served?

Mr. MacLean: No, I didn't, sir.

Mr. Kellock: Without getting into any matters of solicitor and client privilege, I take it that the notice was prepared upon the instructions of your clients—your clients being those who are named as plaintiffs in the intended action?

Mr. MacLean: That is correct, and primarily my instructions came from the Canadian vice-president and director of the UAW, Robert White.

Mr. Kellock: And did he instruct you on his own behalf?

Mr. MacLean: I'm sorry?

Mr. Kellock: You were instructed on behalf of Mr. White representing the International Union, Local 1620. Is that correct?

Mr. MacLean: The International Union and Local 1620.

Mr. Kellock: And Local 1620?

Mr. MacLean: That's right; as well as the other named persons who were aware of it at the time.

Mr. Kellock: Will you just help me as to who the other named persons are?

Mr. MacLean: Their names are on the notice of action, the notice which you referred to under the Libel and Slander Act: "Al Seymour, Lorna J. Moses, and Frances Piercey, on their own behalf as officers and members of the International Union of United Automobile, Aerospace and Agricultural Implement Workers of America, and Local 1620 thereof, and on behalf of all members of the International Union of the United Automobile, Aerospace and Agricultural Implement Workers of America in Canada and its Local 1620 in Ontario." That sets it up.

Mr. Kellock: Right. I'm sorry, there may be a word missing from your style of cause. Are Robert White, Al Seymour, Lorna J. Moses, and Frances Piercey suing on their own behalf in their personal capacities, or intending to sue?

Mr. MacLean: They are suing on their own behalf and in a representative capacity.

Mr. Kellock: All right. So the notice was drawn on behalf of those named persons in their personal capacity and on behalf of the organizations that they represent.

Mr. MacLean: That's right.

Mr. Kellock: Did you, sir, turn your mind to the question of possible parliamentary privilege with respect to Mr. Riddell before instructing Mr. McNamee to draw the notice of action?

Mr. MacLean: I think that it passed my mind and I concluded that I would not be of the opinion that it would be a violation of parliamentary privilege. I didn't research the problem at the time, but it occurred to me that it would not be a violation of parliamentary privilege. We had certainly no intention to breach parliamentary privilege. We

didn't think we were breaching parliamentary privilege.

Mr. Kellock: Then likewise, were you the solicitor in the firm of MacLean and Chercover, responsible for taking instructions and launching the application before the Ontario Labour Relations Board?

Mr. MacLean: Yes sir.

Mr. Kellock: Did you, prior to launching that application on behalf of your client, turn your mind to the question of possible parliamentary privilege for one of the respondents, Jack Riddell?

Mr. MacLean: Again it passed my mind and I concluded that it would not be a violation of parliamentary privilege. Again, we had no intention of breaching parliamentary privilege.

Mr. Kellock: Can you help us at all as to whether the question of parliamentary privilege, or no parliamentary privilege, was brought to the attention of any of your clients?

Mr. MacLean: I can't recall it was ever raised or discussed.

Mr. Chairman: Other members of the committee have questions?

Mr. Sterling.

Mr. Sterling: Mr. Chairman, dealing with the service of the notice, where did you assume that Mr. MacNamee would find Mr. Riddell to serve this notice?

Mr. MacLean: It never crossed my mind, sir.

Mr. Sterling: You gave him specific instructions to serve the notice?

Mr. MacLean: Yes.

Mr. Sterling: Did you expect him to serve it here in Toronto?

Mr. MacLean: It never crossed my mind, sir. I expected him to serve it where he could find Mr. Riddell.

Mr. Sterling: Was your articling student aware that Mr. Riddell was a member of the Legislature?

Mr. MacLean: I think everybody was aware that he was a member of the Legislature. We weren't bringing any matters against him in his capacity as a member of the Legislature. Certainly I knew that much, at that time, of parliamentary procedure. It was proceedings in the labour relations board and the document under the Libel and Slander Act, so he had no intention of dealing with anything in his capacity as a member of the Legislature; it was purely in his private personal capacity as a citizen of this province.

Mr. Sterling: Mr. MacLean, if you were going to serve the writ yourself, where would you go to serve Mr. Riddell with that writ?

Mr. MacLean: The question is very hypothetical, Mr. Sterling, particularly at this time. In hindsight, I would have avoided incurring the concern of this Legislature. At the time, if it had occurred to me, I'm not sure what my decision would have been.

Mr. Sterling: You didn't think it was necessary because of your concern there might be a possibility of a breach of privilege, that you instruct your articling student to serve him in other than the Legislature building?

Mr. MacLean: It didn't concern me, Mr. Sterling, but I accept responsibility for what my student does. It's our position that there was no breach of parliamentary privilege in anything that was done. I do say it's unfortunate it happened the way it did and that it incurred, as I say, the concern of this Legislature. It's easy to do things in hindsight, but I didn't think there was any question whatsoever of infringing the privileges of the Legislature.

Mr. Sterling: You indicated that you didn't do any research. Did you refer at all to the Legislative Assembly Act in regard to whether or not there had been a breach of privilege?

Mr. MacLean: I didn't give it any great research at the time, Mr. Sterling. I have considered it since and my respectful opinion is there wasn't any breach of parliamentary privilege.

Mr. Sterling: Was that opinion arrived at before or after the notice was served?

Mr. MacLean: It was my opinion before any of these actions were taken that there was no violation of parliamentary privilege. I hope to be able to develop that later when I present an argument to the members of the committee. It's answering a question of law right now.

Mr. Chairman: Other questions from committee members?

Mr. Taylor.

Mr. J. A. Taylor: The service of this notice presumably would demand a response on the part of Mr. Riddell. I am wondering if you could indicate what that response had to be, and whether that would take him away from his duties as a member of this House?

[11:45]

Mr. MacLean: No, sir, it had nothing to do with his duties as a member of this House. Certainly, we didn't intend that it

would have anything to do with his duties in this House or the performance of his duties in this House.

His response was really his own concern. His response, as it turned out, was a letter written by his solicitor, Mr. Bullbrook, to the effect that he was not apologizing for what he had said and that he was raising the question of privilege. But, certainly, there was no requirement in any of the documentation we submitted to him that would affect his performance as a member of the Legislature. There was no interference contemplated whatsoever.

Mr. Bolan: I have some questions. If you'll look at the notice of action, on the third page you have his address, Room 121, northwest. It says, Legislative Assembly. You knew that was where he was for certain, isn't that right?

Mr. MacLean: Mr. Bolan, I knew that he was a member of the Legislative Assembly and I knew that he had an office in this building.

Mr. Bolan: And you also know that he has a residence outside of Toronto?

Mr. MacLean: I knew he had a residence someplace outside of Toronto.

Mr. Bolan: You know that he doesn't live in Toronto. His home is not in Toronto.

Mr. MacLean: I knew that.

Mr. Bolan: And if it was not your intention to serve him in the House of the Legislative Assembly then, surely, you would have put the address for service someplace. For example, where he resides regularly outside of Toronto at his home?

Mr. MacLean: I can't really answer that, sir. As far as I am concerned, he can be served in any proper place.

Mr. Bolan: But, in any event, it was obvious to you that the most appropriate and convenient place to serve him was in the House?

Mr. MacLean: No, sir.

Mr. Bolan: Then why did you put the address of the House on the notice of intention?

Mr. MacLean: That was the only address we had.

Mr. Bolan: But you knew that he did not live in Toronto. You knew that he was from another part of the province? Did you try to serve him that at some other part of the province?

Mr. MacLean: No, we didn't, sir. The situation had reached the point where it was of crisis proportion, so far as the UAW were concerned, and the matters that were developing.

Mr. Bolan: You were aware that the House was in session?

Mr. MacLean: I'm not sure that I was, sir. It probably was.

Mr. Bolan: But you knew the House was in session, Mr. MacLean?

Mr. MacLean: I didn't necessarily know it was in session that day.

Mr. Bolan: You knew that the 31st Parliament of the province of Ontario was in session?

Mr. MacLean: The term of the session, yes. I knew what the term of the session was.

Mr. Bolan: Yes. Okay.

Dealing with the notice itself: The notice on page one states that it's a notice of the intention of the plaintiff to bring an action for libel and slander against the defendant. Then, on page two, you referred to the comments which you claim amount to the libel and slander. In paragraph three, you say the plaintiffs will be demanding substantial damages, both punitive and special, and compensation for injuries and then you ask for an immediate apology. Nowhere in the notice does it say, and I'm not saying the notice should say this, that if you apologize there will be no action; if you apologize we won't make any claims for punitive damages, for monetary damages. In other words, it's not one of these situations where if you give us a retraction we are going to withdraw the action. Is that right? The notice does not contain any such implication.

Mr. MacLean: Mr. Bolan, the notice was given under the Libel and Slander Act. If parties are going to sue under the Libel and Slander Act for defamation of the nature that is alleged, they must give notice within six weeks. Whether an action is brought or not remains to be seen, but if notice is not given no action can be commenced.

Mr. Bolan: I realize that, but there is nothing in the notice which indicates that the action will not be proceeded with if he makes a retraction.

Mr. MacLean: That doesn't mean to say that if retraction were given the action will be proceeded with; or even if the retraction were not given that the action will be proceeded with, sir.

Mr. Bolan: But you don't say it. The notice does not say it.

Mr. MacLean: The notice doesn't say it.

Mr. Bolan: No.

Mr. MacLean: The notice doesn't have to say it.

Mr. Bolan: No. What the notice says is that you are claiming substantial damages from him. That's what the notice says, does it not? That's one of the things it says in paragraph three of page two.

Mr. MacLean: Mr. Bolan, our clients in this matter were of the view that the magnitude of the defamation was extremely serious. No writ had been issued in the action at this time. Whether it will be issued will be a matter for the clients to determine. The notice is merely a notice of an order to preserve the rights of the individuals to proceed with the issue of a writ in a lawsuit if they decide they want to do that.

Mr. Bolan. As you say, the notice of the action, first of all was to keep the action alive, of course; you had a limitation period on it. Also, it is a method which has been devised to deal with that act so that it is open to the defendant to make a retraction and then, as you and I know as lawyers, they get together and they say, "Fine, make the retraction and we'll withdraw the action, or settle the action," or whatever the case may be. I am sure that many of these libel and slander suits are handled that way. Do you not agree?

Mr. MacLean: Many matters that are the subject of threatened lawsuits before an action is started are settled that way. I don't disagree with that. I want to say this, sir, this notice originated because of a situation that had developed at that time at the Fleck Manufacturing Company and there were very serious allegations being made against the UAW, which were considered to be very harmful, very prejudicial in the negotiations that were afoot. I am not going to elaborate further on the statements. You can read the newspaper reports attached to it. In other words, there was nothing frivolous or vexatious about this, or anything that lacked bona fides.

Mr. Bolan: I am not suggesting that there was. What I am suggesting to you, Mr. MacLean, is that when a person receives this notice of action the clear implication is that he is going to be sued and that there will be large sums of money demanded from him by way of damages, both punitive and special. That is quite clear in the notice, is it not?

Mr. MacLean: The notice speaks for itself, Mr. Bolan.

Mr. Bolan: It's in the notice.

Mr. MacLean: It's no different than a letter that would be sent for the same effect.

Mr. Bolan: This is the beginning of a court proceeding.

Mr. MacLean: It's not a court proceeding.

Mr. Bolan: You must serve the notice of action before you can proceed under the act. Isn't that right?

Mr. MacLean: Yes. It's not a court proceeding.

Mr. Bolan: I see.

Mr. MacLean: It's a notice.

Mr. Bolan: It says "Of the Supreme Court of Ontario." What would you call that?

Mr. MacLean: A notice.

Mr. Bolan: Is that a court proceeding, anything that emanates from the Supreme Court of Ontario?

Mr. MacLean: We're dealing in matters of law. It will be my submission later that it is not a proceeding.

Mr. Bolan: Okay. I notice that this action is against one defendant, Jack Riddell, and the libel and the slander complained of was carried, as I understand it, on a CBC report and also it was in a newspaper. Is that right?

Mr. MacLean: That's right.

Mr. Bolan: Is there any reason why the radio broadcaster, the CBC, the newspaper, or the reporter who got the story were not made parties to the action?

Mr. Chairman: I'm going to interject here to caution both the witness before the committee and the members asking questions to try to adhere to the question before this committee, which is a matter of privilege, and to set aside, if you can, any other litigation which might be under way. Adhere as faithfully as you can to the simple matter of privilege. Okay?

Mr. Bolan: May I reply to your remarks, Mr. Chairman? I really am trying to keep within the context of what we're trying to determine. My reason for asking this question is to lay emphasis on the harassment against this member.

Mr. Chairman: I understand.

Mr. Bolan: Fine. I understand that Mr. MacLean is prepared to answer to the question of why the agencies that carried this alleged slander were not included as party defendants.

Mr. MacLean: I can answer that, sir, by saying that it wasn't the agencies that originated it. It was Mr. Riddell. I can't give you all the reasons for that. He was selected because he was the one who was making the statements.

Mr. Bolan: He was selected?

Mr. MacLean: The one who was making the statements; he was the one who was making the statements. There is an awful lot of stuff that gets into the newspapers, particularly reporting a strike, but he was the one who was making the statements and he made statements to persons on the picket line as well.

Mr. Bolan: You received no instructions from your client to add as party defendants to the action the agencies, the news media, which carried the alleged slanderous statements of the defendant Riddell?

Mr. MacLean: No, the attention was drawn to the person who was making the statements.

Mr. Bolan: As I say, you received no instructions from the plaintiffs to sue anyone or to serve the notice of action on anyone other than Riddell, is that right?

Mr. MacLean: It seemed obvious that if it was served on a person who was making the statements that that was the proper place it should go. In that area, maybe their statements would cease.

Mr. Bolan: Why did you feel that service of these documents on him was not a breach of parliamentary procedure?

[12:00]

Mr. MacLean: Well, Mr. Bolan, the statements and actions originated entirely from the person in his personal capacity, not as a member of the Legislature, not with respect to anything he said or did in the Legislature, but as an ordinary citizen.

Mr. Bolan: On the question of breach of parliamentary procedure: You focused on the fact that the alleged remarks were not made in the House and you did not focus on service of documents on a member while the Legislature is in session. Is it fair to put it that way?

Mr. MacLean: We focused on serving a private citizen with a document in his capacity as a private citizen.

Mr. Bolan: But when you say you did not consider it a breach of parliamentary procedure, what you did not consider a breach was to serve him because the alleged remarks were made outside the House, not in the House. Is that right?

Mr. MacLean: Simply put, what he said and did has nothing to do with his performance as a member of the Legislative Assembly. There is no protection adhering to him.

Mrs. Scrivener: Mr. MacLean, you have emphasized that you served Mr. Riddell in his private capacity. Earlier on you said in his private, personal capacity as a citizen. You've emphasized the fact that you served him as a private citizen. Inasmuch as Mr. Riddell has been a sitting member of this Legislature for a number of years, is identified with the Legislature in his riding and in the province, makes a number of speeches, statements, writes letters, and participates in interviews as a member, how do you separate his private, personal capacity as a citizen from his image, his public image, which is pervasive, as a member?

Mr. MacLean: I'll answer that in the best way I can. He, of course, was at the same time a member but was not acting as a member when he involved himself in this problem.

Mrs. Scrivener: How can he not act as a member?

Mr. MacLean: Pardon?

Mrs. Scrivener: How can he not conduct himself as a member when he is a sitting member? It's a 24-hour a day job.

Mr. MacLean: I understood and understand the parliamentary privilege to be that. Even a member of this Legislative Assembly—

Mrs. Scrivener: No, my question has nothing to do with privilege at this point, but his identity and image as a citizen, as differentiated from a member which apparently exists in your mind.

Mr. MacLean: I'm sorry, I don't think I quite understand the question.

Mrs. Scrivener: At this point, I'm asking how do you identify him as a citizen when his public image and his identity is as a member. How do you establish that he can maintain a role as a private citizen? How can a member be regarded as a private citizen?

Mr. MacLean: The question, with respect, is a little argumentative. If a person is acting in his personal capacity, as a private citizen, then that has nothing to do with his performance as a member of the Legislative Assembly. It is our position, and I will certainly try to amplify this when I eventually present some legal arguments to this committee, that a civil action against a member of the Legislative Assembly does not constitute a violation of section 38 or any breach of parliamentary privilege with respect to something that has occurred in the member's personal capacity.

He may be a member of the Legislative Assembly at the same time but the matter he's involved in doesn't concern that. He may be known, certainly, as a member of the Legislative Assembly, but that doesn't provide sanctuary to him for all he does in his private capacity. That's my understanding of

the law. If he's being arrested or detained as a result of civil procedures and that interfered with his performance as a member of the Legislature, I would be the first to say that that can't be tolerated. That's contrary to section 38.

Molestation under section 38, according to my understanding of the law, does not come about merely as a result of a civil action in the courts per se. And I have some grounds for that proposition.

Mrs. Scrivener: Mr. MacLean, you seem to be presenting us with a conflict of thinking. You maintain that it is possible for Mr. Riddell to act as a private citizen. That, as I understand you, is what your position is, yet you serve him as a member, and in your mind, there was no question that you were serving him as a member.

Mr. MacLean: We weren't serving him as a member. We were serving him as a private citizen.

Mrs. Scrivener: That seems to be at odds with your actual actions.

Mr. MacLean: He was a member of the Legislative Assembly but he wasn't being served as that. He was known as a member—

Mrs. Scrivener: You seem to be coming right back to my first question. How can you serve him in his private, personal capacity as a citizen when he is a sitting member? How can a sitting member be a private citizen, as you suggest?

Mr. MacLean: With respect, he operates in two capacities and he is known, publicly, as a member of the Legislative Assembly, and may be identified as such, but he certainly wasn't served as such.

Mrs. Scrivener: But you served him here, at the Legislature.

Mr. MacLean: A document was left with his secretary in the Legislature and I realize it was unfortunate the document was left in this building, and I regret that that occurred. But I don't think, on my understanding of the law, that is a breach of parliamentary privilege. And I'm going to have an opportunity later to argue that, but at the moment I'm trying to answer your questions in fact. I think that's the best way I can answer it. If I'm not clear, I would invite a further question from you.

Mrs. Scrivener: If he were not a sitting member, do you think he would have had ocasion to make the statements he did and to attend the interview he did?

Mr. MacLean: I have no idea.

Mrs. Scrivener: You would agree with me that—

Mr. MacLean: He was a person who was very outspoken and I would think that he would probably do it just the same. I can't say. That's really a speculative question that I'm in no position to answer. I don't know Mr. Riddell that well in any event. I don't know him at all.

Mr. MacDonald: Mr. McNamee testified that the delivery of this notice of action was purely informational. Do you share that testimony?

Mr. MacLean: Yes I do, Mr. MacDonald.

Mr. MacDonald: There was some earlier testimony to this effect, but I don't think it was given in any detail: What was Mr. Riddell's response, through his lawyer, to that notice of intended action?

Mr. Bolan: I'm sorry, I missed that question.

Mr. MacDonald: What was Mr. Riddell's response to the delivery of the notice of intended action?

Mr. MacLean: Well—

Mr. Bullbrook: I have to object. The Statutory Powers Procedure Act gives a person the right to counsel. There is no bearing of the Statutory Powers Procedure Act on you. You as the assembly can do as you wish. But I am sitting here now completely fettered and we're getting into things that can perhaps have an extremely adverse effect on my client and I can't say one word.

Mr. Chairman: That's right.

Mr. Bullbrook: I say it's a denial of natural justice.

Mr. MacDonald: Mr. Chairman, I believe it was Mr. Bullbrook himself who said he had replied on behalf of Mr. Riddell. I just wanted some clarification as to exactly what he replied on behalf of Mr. Riddell to this intended action.

Mr. Bolan: Mr. Chairman, I would like to make a motion that counsel for the parties represented here today will have the right to participate in the examination and cross-examination of witnesses.

Mr. Chairman: Could I ask you to put the motion in writing?

Mr. Bolan: All right.

[12:15]

Mr. Chairman: Mr. Bolan moves that counsel for Jack Riddell be allowed the right to participate in the examination and cross-examination of witnesses, and that the privilege of such examination and cross-examination be extended to Mr. L. A. MacLean, counsel for the plaintiff in the notice

of action which is the subject matter of this hearing.

I have accepted the motion. I am going to rule that the motion is contrary to a previous ruling of the chair which was upheld by this committee and I will rule it out of order.

Not hearing a challenge we may proceed.

Mr. Haggerty: Mr. Chairman, the hour of 12 o'clock has arrived and I move adjournment.

Mr. Chairman: Motion to adjourn is always in order and not debatable.

Motion defeated.

Mr. MacDonald: I was asking Mr. MacLean what Mr. Riddell's response was to this notice of intended action.

Mr. MacLean: Mr. MacDonald, I have a letter, over the signature of Mr. James E. Bullbrook, dated March 20, 1978, which is in response to the notice. The letter is marked "without prejudice."

Mr. Bolan: I am sorry, Mr. MacLean. Are we here to determine the contents of letters or are we here to determine whether or not a member's privileges have been breached?

Mr. Chairman: The chair will rule it in this way. I am attempting to allow the members of committee considerable latitude. I have attempted on several occasions to bring you back to the matter before us. I suggest we are straying off the course somewhat. I did allow Mr. Bolan to ask some questions which struck me as being a little off the mark and we eventually brought them back. I think I would in all fairness have to allow other committee members the same prerogative.

Mr. Sterling: Mr. Chairman, we are dealing with facts which led to the service of this particular document. I think if we deal with facts as to what happened after the service of the document we are opening a hornet's nest in terms of the present proceedings, et cetera, that are going on.

Mr. Chairman: I agree and I caution you again. I don't apologize. But I want to reiterate we have by our deliberations today restricted the nature of this hearing, which I think is necessary. I hesitate to restrict it even further by ruling somebody's questions out of order. But I do caution, the testimony given before this committee is recorded, is now a matter of public knowledge and could cause us some difficulties later on because there are other forms of litigation in process. Without censoring any member of the committee on their right to ask any question they want I add the caution again.

Mr. MacDonald: Mr. Chairman, I will get you out of your difficulty. I withdraw my question. I was seeking information on the basis of an earlier reference by somebody who had made the testimony as to the contents of that letter. I was unaware that the letter is included in the documents. I now find that it is included in the documents. I have the answer here. Thank you.

Mr. J. A. Taylor: I would like to explain. I asked a similar question earlier. My reason for that was to assist me in determining whether or not that notice of intent was a document that was contemplated under section 38 of the Legislative Assembly Act, the service of which might be in breach of a member's privilege during the session under that particular section. That was the reason for my bringing it up originally [inaudible].

Mr. Chairman: Any further questions for Mr. MacLean?

Mr. Sterling: Mr. Chairman, I have a few more. First of all, I would like to be certain in my own mind of the function of the four individuals named on the notice that was delivered to Mr. Riddell's office. The notice says that it's on their own behalf and as offcers of the International Union of United Automobile, Aerospace and Agricultural Implement Workers of America and the local. Mr. MacLean, do you represent these unions as well as these individuals, and have you done so in the past?

Mr. MacLean: Yes, sir.

Mr. Sterling: You're satisfied that as officers of these unions they have the authority to bring such an action—a libel and slander action?

Mr. MacLean: Yes they have, sir. The individuals that are named are also people who were intimately involved in the union's organizational campaign and who were immediately affected by the statements that are complained of.

Mr. Sterling: My problem here, of course, is that if we did find that there was a breach of privilege, I want to be certain that these people have the right to represent the unions.

The second question is that on the same date you issued the notice you also filed, I believe, an application for consent to institute prosecution before the Ontario Labour Relations Board. Is that correct?

Mr. MacLean: It was on or about the same date, yes.

Mr. Sterling: And I presume you received instructions from the same people in this regard?

Mr. MacLean: I received instructions from at least some of the same people.

Mr. Sterling: Which people did you receive instructions from?

Mr. MacLean: Instructions specifically would have been received by me from Mr. White.

Mr. Sterling: I notice that on your application for consent to institute prosecution that you had put Mr. Riddell's address as Queen's Park. Did you intend him to be served with their documentation at Queen's Park?

Mr. MacLean: Not necessarily; that was the only address we had as to his whereabouts. It was something that was not really considered; that was an address we had as to his whereabouts; we didn't know of any other place he could be located. Whether he was going to be served there or not, it didn't occur to us.

Mr. Sterling: You are aware from that document—or it appears so—that he is a member of the provincial parliament. Were you and your clients aware that he represented the area where this conflict was going on?

Mr. MacLean: We were aware from reports in the newspapers, from what he was saying in the newspapers.

Mr. Chairman: Are there any further questions?

Mr. Bolan: I have another question.

Mr. Chairman: Mr. Bolan.

Mr. Bolan: Mr. MacLean, you mentioned earlier that this notice of action was not against Mr. Riddell in his capacity as a member of the Legislature but as a citizen.

Mr. Haggerty: Private citizen.

Mr. Bolan: A private citizen; I believe you used those words.

Mr. MacLean: Is there a question, sir?

Mr. Bolan: You had mentioned that earlier?

Mr. MacLean: That's obvious.

Mr. Bolan: This morning?

Mr. MacLean: That's right.

Mr. Bolan: Right.

Mr. MacLean: I repeat myself again, that's right. There was no intention to deal with Mr. Riddell as a member of the Legislature.

Mr. Bolan: I would like you to look at the appendix—I can't make out whether it is A or H—to paragraph 4 of the application for consent to institute prosecution.

This is in support of your application. If you will turn to paragraph 26; I read: "On or about the 14 and 15 of March, 1978, the respondent Jack Riddell, a Liberal MPP, acting for and on behalf of the respondent . . ." Now you clearly identify him in that paragraph as a member of the provincial parliament?

Mr. MacLean: He is identified as a member of the provincial parliament, but he was acting for and on behalf of the respondent company, not as a member of parliament.

Mr. Bolan: If it was not your intention to go after him then, in any other capacity than in his capacity as a private citizen, why would you include in that paragraph reference to him being a member of the provincial parliament?

Mr. MacLean: As a matter of identification. He was referred to in the press as a Liberal MPP. But the action wasn't brought against him as such; and I will repeat it again: there was no intention of bringing action against him as such. We know better than that, sir.

Mr. Bolan: In spite of the fact that reference is made to him as a Liberal MPP in paragraph 26, in spite of the fact that the notice of action was served on him personally —I'm sorry, not personally but was served on his office at Queen's Park—in spite of the fact that the address for service on the notice of action on page three is Queen's Park, it was not your intention to commence the action or to serve the notice of action or to take proceedings under the Ontario Labour Relations Act in his capacity as a member of the Legislative Assembly; is that what you want us to believe?

Mr. MacLean: Again, I repeat what I said before, and if you read the document as a whole you'll come to that conclusion, sir.

Mr. Bolan: That's the problem, I have been reading it as a whole.

Mr. Chairman: Are there any further questions from members of the committee? Thank you, Mr. MacLean.

Mr. MacLean: Thank you, Mr. Chairman.

Mr. Chairman: Mr. Robert White?

Robert White, sworn.

Mr. Kellock: Mr. White, where do you live?

Mr. White: I live in Weston, Ontario.

Mr. Kellock: What is your address?

Mr. White: It is 87 Stapleton Drive.

Mr. Kellock: And do you hold some office with the United Autoworkers?

Mr. White: As of last Saturday, I hold the office of the director for Canada and international vice-president.

Mr. Kellock: Are you a member or officer of Local 1620?

Mr. White: No, I am not; 1620 is a chartered local of the international union.

Mr. Kellock: Would I be correct that the notice of action with respect to the intended or proposed action for defamation against Mr. Riddell was issued by a Mr. MacLean on your instructions, among others?

Mr. White: That's correct.

Mr. Kellock: And did you at any time discuss with Mr. MacLean how that piece of paper might be delivered to Mr. Riddell?

Mr. White: Not at all.

Mr. Kellock: Did you think about that at any point?

Mr. White: It didn't occur to me at all. I leave that matter to our counsel.

Mr. Kellock: And with respect to instructing Mr. MacLean to prepare the piece of paper, did you at any time consider whether that might interfere with parliamentary privilege possessed by Mr. Riddell?

Mr. White: No, I didn't, sir. As you can appreciate, I have been in the labour movement since my teens and am not a learned member of law. I do read enough in the papers and other media in this country to understand if a person makes a statement in the House that they have some privilege. I understand these statements attributed to Mr. Riddell were made at the scene. They were statements that I thought defamed the character of a number of people in my union and my union in general, people who I consider have high integrity. On the basis of that, it was my instructions to my counsel that we ought to take the necessary action.

[12:30]

Mr. Kellock: Were you the officer of the international union who gave instructions to apply to the labour board for the labour relations board's consent to prosecute?

Mr. White: Yes, I was.

Mr. Kellock: Did you give any thought as to where the registrar of the board might be mailing the piece of paper that had to go to Mr. Riddell with respect to that matter?

Mr. White: No, it did not occur to me. Also, at that time, I was a member of the Ontario Labour Relations Board, which had not sat for a number of months. But it did not occur to me. My understanding of the workings of the board is that the registrar determines that on their own.

Mr. Kellock: With respect to the commencement of the proceedings themselves, did you think about whether or not that might be regarded as a breach of Mr. Riddell's parliamentary privilege?

Mr. White: No, sir, it did not occur to me.

Mr. Chairman: Questions from the committee? Yes, Mr. Bolan?

Mr. Bolan: I have some questions. What is your name. again?

Mr. White: Bob White.

Mr. Bolan: Mr. White? I'm sorry. When you say that you did not—

Mr. White: I'm sorry; I didn't get your name, sir.

Mr. Bolan: Mike Bolan. When you say that you did not consider the intended action against Mr. Riddell as a breach of privilege, you were addressing yourself to the fact that the remarks allegedly made, were made outside of the House.

Mr. White: I can honestly say, sir, that the matter never entered my mind. I knew that they were not made in the House but, as far as a breach is concerned, it never entered my mind until some point after we had followed the proceedings. We got a reply and that was the first time it entered my mind.

Mr. Bolan: But, as I say, the reason it never entered your mind is because you had directed your attention to the fact that the remarks were made outside of the House.

Mr. White: No, the reason it never entered my mind was I was directing my attention to the fact that statements were made by a person against our union, and I would do the same with anybody else.

Mr. Bolan: But you just finished saying a few minutes ago that you have read enough about privileges in the newspaper that, if a person makes a statement in the House, that can't be held against him.

Mr. White: Exactly. Those matters are matters that came to my mind, obviously, sir, since the question of privilege has been raised.

Mr. Bolan: I see.

Mr. White: But at the time that I instructed the institution of prosecution I never once considered that matter.

Mr. Bolan: When you first heard about this, was it on a radio or what you read in the paper?

Mr. White: I read about it in the Globe and Mail.

Mr. Bolan: I see. You're also aware that some reference was made to it on the CBC, I believe, or on the radio?

Mr. White: Yes, I was. I didn't hear that personally; I've since read a documentation of that.

Mr. Bolan: Yes. And instructions were given to your counsel to commence the action or to serve the notice of intended action against Mr. Riddell.

Mr. White: As far as the consent to prosecute, the Labour Relations Board along with a number of other people; on the libel and slander action, him on his own.

Mr. Bolan: Dealing with the libel and slander action, you did not see fit to include, as party defendants, the Globe and Mail or the reporter who wrote the aricle, or the CBC or the broadcaster who did the interview. Is that right?

Mr. White: That's correct.

Mr. Bolan: Any reason why?

Mr. White: I was concerned about the person that made the statement, and I did not consider the Globe and Mail or the CBC to be a party to making the original statements. Again, that's not for me to argue. That will be something for my counsel to argue. That's just my layman's understanding of it.

Mr. Bolan: But, presumably, you saw your counsel with the specific intention of giving him instructions to serve a notice of intended action.

Mr. White: Yes.

Mr. Bolan: Without getting into the question of client-counsel privilege, you did not instruct him to include, as party defendants, the Globe and Mail or the CBC or the media that carried the alleged slander?

Mr. White: That's correct, sir. We never discussed it.

Mr. Bolan: When you discussed this with your counsel, you knew that Mr. Riddell was a member of the Legislative Assembly of Ontario?

Mr. White: By virtue of reading it in the Globe and Mail, sir. I had never heard of Mr. Riddell before in my life. I've appeared before legislative committees of this House, but I had never heard of Mr. Riddell before.

Mr. Bolan: You knew that he was a member of the Legislative Assembly when you spoke to your counsel. Is that right?

Mr. White: Yes, that's correct.

Mr. Chairman: Further questions?

Mr. Bolan: May I just have a moment, please, to go over my little checklist here?

Mr. Chairman: If you like, we can come back.

Mr. Bolan: I'll just pass for now, if somebody else has questions.

Mr. Sterling: Mr. White, did you know that Mr. Riddell was the member for the area where the Fleck Manufacturing Company was located?

Mr. White: Not until I read it in the newspaper, sir.

Mr. Sterling: So you knew it when you went to instruct your counsel, is that correct?

Mr. White: From the newspaper reports, that's correct.

Mr. Sterling: You mentioned earlier that there was something in your mind that said a member had a privilege when he spoke in the House. Is that correct?

Mr. White: I said, sir, that from my involvement in the labour movement, reading, and being involved in the political process in this country, I had read enough about it to know that there is some privilege attached to a member in all the legislative halls of this country.

Mr. Sterling: Did you, after reading this article—

Mr. White: What article, sir?

Mr. Sterling: The article in the Globe and Mail, dated March 15, 1978—did you go to the reporting services of this Legislature in order to find out what Mr. Riddell might have said in the Legislature on this matter?

Mr. White: No, sir, I did not.

Mr. Sterling: I notice that article is dated March 15. Did you see your counsel on that date?

Mr. White: I am not sure what date I saw him.

Mr. Sterling: I noticed the documents are dated the next day by your counsel, and would assume that it was done in a very short period of time.

Mr. White: I believe from the time of my instructions to the time the document was issued was a short period of time, but I am sorry I can't tell you the exact dates.

Mr. Sterling: To your knowledge no one checked in Hansard to see if these statements were in conflict with what Mr. Riddell might or might not have said in the Legislature. Is that correct?

Mr. White: I did not. I am not aware if anybody else did.

Mr. Sterling: In instructing your counsel, was it your intention to sue Mr. Riddell?

Mr. White: In instructing my counsel, I considered the statements attributed to Mr.

Riddell to be libellous and slander. I instructed my counsel to institute action against him. As to where that stands in terms of suit or money, those are matters that we discuss with our counsel as we proceed. At this point in time I couldn't answer that question. I would have to take advice of counsel on the matter of determining amounts of money towards people in the action. I have not been involved in this kind of an action, to my knowledge, before.

Mr. Sterling: But when you instruct your counsel to take action, does that mean sue to you?

Mr. White: To my kuowledge, that means to notify the person that we intend to sue.

Mr. J. A. Taylor: I don't have any questions of the witness; but what concerns me is, surely it is not relevant as to what was said by whom, whether it was said in the House or outside the legislative assembly, surely the issue is that we have copies of two documents, an application for consent to institute prosecution and a notice of action which were served on a member of this Legislature while the House was in session. Surely we are charged with the responsibility of determining whether or not the service of those documents on a member of the Legislature was a breach of a member's privilege under section 38 of the Legislative Assembly Act. We are not here to determine what flows from that if in fact those papers were served, and they obviously were served. We are not here to determine whether the service is vitiated or ineffective because they were served during that period. We are not here to assess the merits of the actions. We are just here to determine, surely, whether or not these documents are included under this section, and if they are the fact before us is to determine whether or not that's a breach of the member's privilege.

I frankly don't see our spending too much time going into what might have been said, whether it was said in the House or outside the House, that it may be privileged if it is said in the House but not so outside the House—I don't think that's too relevant and I would ask you to ensure that we keep on course in connection with the issue.

Mr. Chairman: Just in response to Mr. Taylor, I have explained that we have been restrictive in terms of who gets to ask the questions here. I am reluctant to go past that point and restrict, you know, interject on the questions. I understand your concern and I certainly share it.

Mr. J. A. Taylor: You see, we have also a proceeding here, which I'm sure is causing some concern to legal counsel and those persons who are—

Mr. Chairman: Yes, I'm aware of that.

Mr. J. A. Taylor: If we permit this proceeding to get out of hand in terms of the area that's covered, if it may be prejudicial in terms of future actions it may be the proceedings being recorded here could be used. We may be touching on information that could very well be disputed, and which would of course prompt the legal counsels here to cross-examine. So it couldn't be—

Mr. Chairman: Yes; my problem, you see, is that I don't know what your question is until you ask it. That causes me more than a little difficulty.

Mr. Haggerty: Am I correct; when our solicitor asked a question to Mr. White, that his statement was he's a member of the labour relations board? Is that correct?

Mr. White: I said I have been a member of the labour relations board.

Mr. Haggerty: You have been?

Mr. White: I've not served in that capacity for a number of months and my term of office, I believe, expired in January or February of this year. I'm presently being replaced.

Mr. Haggerty: Are you contemplating being put back in that position as a member of the—

Mr. White: No, I've not served actively on the board for over a year. I have not attended any full committee meetings, I believe, for over a year. I do not have time to serve on the labour relations board and other names have been submitted to replace me.

Mr. Haggerty: You still are a member then?

Mr. White: To my knowledge, no; my term of office has expired.

Mr. Haggerty: Your term of office could be expired but you still could be a member.

Mr. White: No, to my knowledge I am not a member and I've not been called to a hearing in a number of months. So I consider myself not to be a member of the labour relations board.

Mr. Haggerty: For information, who's the appointing body then, to appoint members to it?

Mr. White: I believe it's the Labour minister, Mrs. Stephenson.

Mr. Haggerty: It's from the Labour minister then?

Mr. White: Yes. No, I'm sorry, I think my appointment came from Premier Davis' office. A letter from Premier Davis' office, yes.

Mr. Chairman: They all do this.

Mr. Haggerty: But you still could be a member of the Labour Relations Board?

Mr. White: To my knowledge I am not a member of the Labour Relations Board. I have not served in that capacity for a number of months, my term has expired.

Mr. Chairman: Any further questions?

Mr. Bolan: Yes, I have—

Mr. Chairman: Mr. Bolan.

Mr. Bolan: You are Robert White, one of the plaintiffs in the notice of action, is that right?

Mr. White: Surely, sir.

Mr. Bolan: I'm not being facetious when I ask the question.

Mr. White: I think you are, with great respect.

Mr. Bolan: No, I'm not. There are lots of Robert Whites.

Mr. White: Well, I'm not being Robert White because I'm somebody's brother.

Mr. Bolan: I don't know; I'm asking you a very clear and very simple question.

Mr. White: I identified that—with great respect, I answered that question as the first question by the counsel of the committee.

Mr. Bolan: Okay. When you went to your counsel's office in Toronto to give him instructions, were you also giving him instructions on behalf of all of the other people who are mentioned here—Al Seymour, Lorna J. Moses, Frances Piercey?

Mr. White: Yes, I was.

Mr. Bolan: Were they with you?

Mr. White: I did not attend the counsel's office. They were in the counsel's office, I did it by telephone.

Mr. Bolan: I see. You were giving instructions on their behalf as well?

Mr. White: Yes, I was, because they were all actively engaged in the organizational campaign and I considered them to be slandered by the action.

Mr. Bolan: That's all the questions I have for Mr. White.

Mr. Chairman: Further questions? Thank you, Mr. White. Lorna J. Moses, is she present?

Mr. MacLean: Not present.

Mr. Chairman: She is not? Frances Piercey?

Mr. MacLean: Not present.

Mr. Chairman: Al Seymour?

Mr. MacLean: Not present.

[12:45]

Mr. Kellock: The committee will have to consider at some point whether the evidence of those persons is essential to its responsibilities. There is one other matter I would like to bring to the committee's attention. In the first place, the documents that are referred to in the brief statement of facts are before all the members of the committee. I don't think there is any problem about that. If there is, we can hear from Mr. Bullbrook or Mr. MacLean.

There is one other document that may have some bearing on the committee's inquiry. That is an order in council. The copy I have indicates that it was approved by Her Honour the Lieutenant Governor on January 15, 1975. It's given the number OC-131/75. It's an order in council pursuant to section 93 of the Legislative Assembly Act. It provides that the Speaker of the House is to have jurisdiction over certain parts of the legislative building. That is defined by reference to Ministry of Government Services drawings. I would suggest that the committee would want to look at those drawings to make sure that Mr. Riddell's office is in or outside the confines of the geographical area described by this order in council.

I want to bring to your attention, Mr. Chairman, that I have been told by Mr. MacLean that he does not accept that this order in council has the force and validity of an order in council that has been filed and published in the Ontario Gazette in accordance with the Regulations Act. I do not want to get into whether or not it should have been, I just wanted to bring to the committee's attention that that is the position that Mr. MacLean is taking. I want Mr. MacLean to know that whether it has or hasn't, we will discover and advise the committee in due course. Presumably, at such time as the committee decides, if it so decides to hear submissions on behalf of the people interested here, that matter can be dealt with. I wanted the committee to know that I intend to put this document before the committee, when I can find out whether it has or has not been gazetted.

Mr. MacLean: I wonder, Mr. Chairman, if I can put my position to the committee members. Mr. Kellock is correct. If I may just give you—

Mr. Chairman: Just before you start, I would like to seek direction from the members of the committee. Would you like to call, not as witnesses in this instance, because they have both appeared before the committee, but are you prepared to give counsel for both sides the opportunity to make a statement, an argument or whatever, before the committee; or do you con-

sider that that would not be within our purview? It goes directly to the point we have raised several times this morning about what exactly is in front of the committee. Would it serve a useful purpose to have counsel for both sides make a formal statement? Could I seek direction from the committee on that?

Mr. Bolan: May I just ask a couple of questions first of all? Are there any other witnesses to be called?

Mr. Chairman: None that I'm aware of; none that either the counsel has recommended or a member of the committee has asked for.

Mr. Bolan: I was under the impression that Mr. Kellock might consider calling three of the plaintiffs in the notice of action, and that we have to make some decision as to whether these people are to be called.

Mr. Chairman: I should point out to you, to make this distinction, they were invited. They were not subpoenaed or in any way required to be present.

Mr. Kellock: The point I made, Mr. Chairman, was that whether or not the committee wanted to hear from them was a matter for the committee. If the committee wants to hear from them, there are procedures available to it to make sure they have them.

Mr. J. A. Taylor: Mr. Chairman, maybe counsel could guide us as to whether in his opinion it is necessary for those witnesses to be here in order for the committee to make its decision. Can we have that?

Mr. Kellock: Mr. Chairman, there are many possibilities and I don't want to appear to be suggesting any one of them. If it were the decision of the committee ultimately that there had been a breach of privilege and if the committee felt inclined to make a recommendation to the House as to what the House ought to do about it, then of course the question as to whether or not the privilege had been broken by any number of individuals might become relevant. Bearing that in mind, everyone who has seemed to have anything to do with the two pieces of litigation were invited, not required, to come before the committee today to say whatever they might like to say about the matter.

Not having heard from three of the intended plaintiffs in the libel action may put the committee in some difficulty in making any finding they did or did not have anything to do with breach of privilege if a breach of privilege wes established.

Mr. J. A. Taylor: May I just comment that legal counsel for those persons is, in fact, here. He obtained his instructions from them. They were notified of this committee hearing today and elected not to turn up. I should think that is a decision they have made. I don't see how that should impact on what may flow from the decision by this committee, if that decision was to rule that in fact the privilege of a member was breached.

Maybe I am wrong in that observation. If you feel I am, and there is some gap in justice because those people aren't here, then I suppose we could force them to be here. I really don't see that conclusion follows.

Mr. Bolan: I think it is incumbent that these people be here to give their evidence. I think one of the germane points here is whether or not there has been harassment of the member; because if there has been harassment, that can be considered a breach. I think to have these other three parties here goes to the question of harassment and what they really intended, themselves, by the action, because they are proposed plaintiffs in an intended action.

The other thing I might want to raise at this time is that in view of the width and breadth of evidence which has been given this morning, it is my intention to recall Mr. Riddell to give further evidence. Whether we do it now or next week, preferably next week.

Mr. J. A. Taylor: There was another point you asked direction on from the committee.

Mr. Bolan: Yes.

Mr. J. A. Taylor: That was presentation by legal counsel. They have been invited here and my comment would be they should be entitled to make their statement or submission.

Mr. Chairman: Then I take it there is a consensus forming that we will sit subsequently on this and the three named persons who were invited today will be invited again. Is there consensus among the committee that the invitation will suffice or would you prefer the use of power of subpoena?

Mr. Sterling: Well, Mr. Chairman, the invitation will suffice as long as those three people understand the import of this particular process in that it could have substantial ramifications in what might happen to them down the line if in fact, a breach of privilege was found and the House decided to censure them in some way.

Mr. Chairman: I would take it we would instruct our counsel to make that point to them.

Mr. MacDonald: They could come, Mr. Chairman, themselves or through their counsels then.

Mr. Bolan: I would suggest that they be subpoenaed.

Mr. Chairman: Would you make it in form of a motion please.

Mr. J. A. Taylor: I don't think, Mr. Chairman, we should subpoena them. Their legal counsel is here. I frankly don't see what more they could add in terms of notice. I am sure they can be instructed from their legal counsel as to what may flow from refusal.

Mr. Chairman: I take it then, consensus is formed within the committee that at next Thursday's meeting we will call those three witnesses. We will see that they are informed of the seriousness of their attendance, that they are aware of that and that actions might happen as a consequence of that. Is it also consensus that each of the counsel involved in this matter be given the opportunity of making a closing statement to the committee? Is that agreed?

Mr. MacDonald: Calling any other witnesses that need to be heard.

Mr. Chairman: Calling any other witnesses—we have a slight difficulty here. Our counsel cannot be present, and that was made clear to the clerk before he was retained as counsel. What's your pleasure? You have several options. It appears that we could ask for permission from the House leaders to make arrangements to sit, for example on Monday morning at 10 o'clock and hear these people. We could set the matter over until the counsel returns. We could proceed to hear them in the absence of our own counsel but we would have a representative here. What's your pleasure?

Mr. J. A. Taylor: Is there some other counsel who might be present from counsel's firm?

Mr. Kellock: I can't answer that question at the moment. Hopefully, there could be, but it would be unfair to him, I suggest, unless there was adequate time to prepare, and that would involve having a transcript of these proceedings I believe. I don't know how quickly that can be accomplished.

Mr. MacDonald: What about the option of 10 o'clock on Monday morning?

Mr. Kellock: That would be satisfactory.

Mr. J. A. Taylor: I think you have a problem in terms of notice too. You know, you have to be fair about this.

Interjections.

Mr. Bullbrook: How long are you going to be away?

Mr. Kellock: I am going to be away from May 3 to May 13.

Mr. Bullbrook: Mr. Chairman, if I might—

Mr. Chairman: No you can't.

It appears to me, then, that the committee is getting to the point where you are saying you would like to set this over until our counsel returns. Then at the subsequent meeting we will call those three witnesses and we will ask counsel for both parties to make a closing statement. It would strike me, then, that in terms of where we go from there the committee may like to hear the witnesses, hear the counsels state their arguments; and then may want to exercise its prerogative to meet in camera and come to a finding and then make some recommendation at a subsequent date. Is that agreeable?

Mr. Haggerty: Two or three days sitting then.

Mr. Chairman: Conceivable.

Mr. Bullbrook: Mr. Chairman, you keep saying I can't speak and I realize that it's a matter of extreme importance as far as I'm—

Mr. Chairman: Will someone move that Mr. Bullbrook be heard?

Mr. Bolan: I move that Mr. Bullbrook be heard.

Mr. Chairman: Those in favour?

Agreed.

Mr. Chairman: Thank you.

Mr. Bullbrook: Mr. Chairman, I am very much concerned and have expressed my concern to your counsel that the breadth of examination of the witnesses went so wide and so far-reaching and beyond the pale of, most respectfully, relevance to your proceedings. But mainly, in connection with the libel and slander matter, the media, of necessity, have been here, and I am pleased they are, but it could possibly have repercussions. That is the re-publication of an alleged libel or an alleged slander, and there was some evidence given in connection with that today, does have very punitive effects in connection with the action itself. I would ask, purely on a voluntary basis, that the media in relating to the evidence on the libel and slander do not relate to the substance of the alleged libel and slander.

Mr. Chairman: I think it would be fair to say, and I would give you notice of this as chairman, that I have attempted to deal with this thing with some latitude today be-

cause we don't have any precedent to fall back on, frankly. I think it also fair to give you notice that I am going to have a little discussion with our own counsel prior to the next committee meeting. If it is made clear to me that members of the committee are threatening some other form of litigation, or endangering it or going past the pale as the eloquent counsel so nicely put it, the chair will not give as much latitude to questioning in the next session.

I am reluctant to do that, frankly, because we have been restricted to date, and we are all aware of the problems that are there, and it's going to be very tough for the chair to rule somebody out of order halfway through a question, but we may be making that attempt. So we are agreed on how to proceed with this matter and that it will be dealt with subsequent to May 13, at the following meeting.

Mr. J. A. Taylor: Could you fix that date now, Mr. Chairman?

Mr. Chairman: It would be May 18. If members of the committtee could just hold their places for a moment, we have a couple of small pieces of business. We are back to the mundane. We have a bill presented to the committee from the city of Cornwall, No. 2. It has been published in the Ontario Gazette and the Standard-Freeholder. The six publications required have been met. Could I have a motion?

Mr. MacDonald: Moved that the bill go to the Speaker's panel.

Motion agreed to.

Mr. Chairman: There are a couple of other mundane things. As you are aware, we have received the authority of the House to obtain staff, and from the Board of Internal Economy, we will have the services of a Go Temp secretary, as soon as we can get one on line, and the authority to hire a researcher. I have conducted two interviews. I think there are half a dozen others to take a look at. We will attempt to get those people in line as quickly as we can. The procedural affairs committee will have an office of sorts, 'I take it somewhere in the Whitney Block, for this secretary and a researcher.

Do you have before you for your consideration the matter that we have been discussing for some time now of appeals from the Speaker's rulings and the material presented by Mr. Roderick Lewis? Did you all receive that? I would take it that at next Thursday morning's sitting we will deal with that matter. Is that agreed?

Agreed to.

Mr. MacDonald: What else is likely for next week's agenda?

Mr. Chairman: I would think that would be the major item and I would anticipate that would take some time. I'm going to ask Mr. Lewis to be present, or someone from the Clerk's office to be present when we do discuss that.

I would invite you all to attend outside of the chamber at 1:55 today and you will see the first physical evidence of this committee doing some work when Jack comes in the front door instead of in the back door.

The committee adjourned at 1:03 p.m.

SPEAKERS IN THIS ISSUE

Bolan, M. (Nipissing L)
Breaugh, M.; Chairman (Oshawa NDP)
Cunningham, E. (Wentworth North L)
Haggerty, R. (Erie L)
MacDonald, D. C. (York South NDP)
Riddell, J. K. (Huron-Middlesex L)
Scrivener, M. (St. David PC)
Sterling, N. W. (Carleton-Grenville PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Witnesses:
MacLean, L. A., MacLean & Chercover, counsel for the UAW
McNamee, J., Articled student-at-law, MacLean & Chercover
Riddell, J. K., MPP, Huron-Middlesex L
White, R., Director for Canada and International Vice-President, UAW

Assisting the Committee
Bullbrook, J. E., Counsel for J. K. Riddell, MPP (Huron-Middlesex L)
Kellock, B. H., Counsel for the committee

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Procedural Affairs Committee

Proceedings against Member for Huron-Middlesex (Mr. Riddell)

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JUN 13 1978
UNIVERSITY OF TORONTO

Second Session, 31st Parliament

Thursday, May 18, 1978

Speaker: Honourable John E. Stokes
Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

THURSDAY, MAY 18, 1978

The committee met at 10:20 a.m.

PROCEEDINGS AGAINST MEMBER FOR HURON-MIDDLESEX (MR. RIDDELL)

Mr. Chairman: As you recall, we have issued an invitation to three other people to appear before the committee this morning. As I indicated at the previous meeting, there seems to be some difficulty with the latitude of questions, so I'm going to ask our counsel to give us some direction in that regard. Through the course of the meeeting I will seek the advice and assistance of our own counsel if we feel that the questions are straying too far afield. That's an agreeable way to proceed. We will first have a few words from our counsel and then we will call our witnesesses.

Mr. Bolan: Before we proceed I have some discussion to get into that has to do with the interpretation of our terms of reference.

Mr. Chairman: That's precisely what the counsel wants to speak on.

Mr. Kellock: Last day, Mr. Chairman, there were some questions directed to witnesses that from one view of the terms of reference might be considered to have strayed beyond those terms of reference. As I read the order moved by Mr. Nixon, the question of the service of the documents in question and whether or not that service involved a breach of a privilege, was referred to this committee for an inquiry.

As I read the terms of reference—at least, literally—whether or not the commencement of either or both proceedings involved a breach of privilege was not referred. It may be that it was intended by some that it should be, but certainly from the wording of the motion that was made and passed, that question was not. Consequently, it would be my view that the background facts that gave rise to both proceedings are really not concerns of this committee.

The only way in which those facts might be considered to be relevant would be if the committee was concerned about the attitude of those who it is said may have breached the privilege, and questions concerning the bona fides or otherwise of the proceedings themselves might go to the state of mind of those people. The state of mind of those people would only become relevant if at some future time this committee and the House were of the view that a privilege did exist and that privilege had been breached. So it is up to you, Mr. Chairman, or the committee as a whole, to determine whether or not the questions put to the witnesses here ought to go beyond the question of the services and the related question as to whether those services were in breach of some privilege.

Mr. Chairman: Are there any questions or discussion on the part of committee members on this matter?

Mr. Bolan: Yes, with the greatest respect, I do disagree with Mr. Kellock's interpretation of the terms of reference. I think in order to get a proper perspective of exactly what are our terms of reference, we have to go back to the ruling which was made by the Speaker. The ruling made by the Speaker is found on page 1238 of Hansard of April 6, 1978, and I'll read it again here. His ruling is really broken down into two parts.

"I have carefully perused the Hansard report of Mr. Riddell's statement, and from the facts as presented by him there appears to be at least a presumption that several offences against the provisions of section 38 of the Legislative Assembly Act may have been committed, not only by the service of these documents during the prohibited period"—that's one area where he says there may be a breach—"not only by the service of these documents during the prohibited period, but also by the service of such documents in the precinct of the House without the permission of the House or the Speaker."

So it would appear that the Speaker was making his ruling on two grounds: first on the service of the documents per se, these particular documents, which really amounted to the commencement of an action (a) the notice of action which was a notice under the Libel and Slander Act, and (b) the service of the notice of intention to prosecute. That type of service amounts to the commencement of an action or the intention to commence an action.

We just can't look at the physical service itself. I think we have to move beyond that, and I think that that's precisely what the Speaker meant. Otherwise I think our exercise is one of futility if we just restrict it to the service of documents in the precinct of the House. This whole matter goes beyond just the question of the physical service of documents on the member; rather it goes to the commencement of an action. That I submit is what the Speaker means when he says, "not only by the service of these documents during the prohibited period." What that really means is that actions have been commenced against the member during the prohibited period, and that in itself could be a breach of the member's privilege. Then he goes on to deal with service in the precinct.

The motion put by Mr. Nixon and seconded by Mr. Worton refers to the matter of the service of documents. The matter of service of documents, I submit to you, refers to what the Speaker was talking about when he was talking about service. Again the Speaker was talking about service in the sense that it starts an action, as well as service meaning within the precinct of the House.

I would like to say in closing that if there's any doubt about just what our terms of reference are then I think it is the function of this committee to adjourn these proceedings and to go back to the House, and to go back to the Speaker to get precise clarification of our terms of reference. Again, if you notice in the motion brought by Mr. Nixon, it refers to the matter of service. It does not say, "to the matter of service of these documents in the precinct of the House"; it says 'in the matter of service." My submission is that "the matter of service" means the commencement of these two actions which are the subject matter of this hearing.

Mr. Sterling: Mr Chairman I apologize for being late this morning. I understand Mr. Kellock made some remarks at the opening and I would like to hear those remarks again. I have asked my confrere and she has indicated to me that she would also like to hear them repeated. She was having a little bit of difficulty interpreting some of the remarks and he's going to the very nub of the problem. Would that be possible?

Mr. Kellock: It's possible that I can repeat the substance. I'm sure I can't do it in the same words. I don't know that there is any difference between what I said and what Mr. Bolan said. Perhaps I can clarify it in this way.

It would be my view, based on the terms of reference as set out in the order, that a question such as whether the libel and slander action is frivolous and vexatious is not something that this committee is concerned with. Only the court would be concerned with that. One has to look at the nature of the proceeding in order to determine what was served.

[10:30]

But apart from that, it seemed to me that last day some questions were directed to some witnesses that went to whether or not the proceeding was properly founded and whether or not other people should have been joined as defendants. That sort of thing has nothing to do with the terms of reference.

But there are three questions embodied in the terms of reference—the time of the service, the nature of the service, and the place of service. You have to appreciate what was served before you can examine that question. That is why I don't know that there is any real difference between what I said in opening and what Mr. Bolan said.

Mr. Bolan: With the greatest of respect, there is a world of difference, because what counsel seems to be saying is that the question to determine is whether or not service of documents in the precinct amounts to a breach of privilege. I say that this goes beyond that, based on the Speaker's ruling where he says that, "several offences against the provisions of section 38 . . . may have been committed."

Section 38 reads specifically: "Except for any breach of this Act, no member of the said assembly shall be liable to arrest, detention or molestation for any cause whatever." The reason for me pursuing the line of questioning I did two weeks ago was to see if there was any kind of action on the part of the plaintiffs, or the solicitors for the plaintiffs, which amounts to a molestation. Then we get into the definition of molestation. Based on my research of it, and based on what I was trying to establish, the interference with the duties of a member brought about by this kind of civil action amounts to a molestation. So I think we have to address ourselves to section 38.

Mr. MacDonald: I am more confused. Does what Mr. Bolan just said exclude it from your interpretation? I am addressing our counsel specifically.

Mr. Kellock: I don't believe so. I am having difficulty in determining where, if anywhere, Mr. Bolan and I disagree.

Mr. MacDonald: I think you are both saying the same thing.

Mr. Sterling: May I interject a little bit? I have come to the same conclusion as counsel and Mr. Bolan have in terms of saying there are two possible breaches of privilege here. There is a possible breach of privilege relating just to the service of documents, the physical aspects of it. We may have had to go into the background of the nature of the suit in order to determine if the service or the nature of those suits was strictly civil and had nothing to do with this House or anything of a political nature.

The second type of privilege that could have been breached relates to section 38 and whether or not the type of action that was brought was a molestation of the member and was a breach of his privilege in that area; whether he was being intimidated or harassed by the nature of the suit. I don't think that that has been referred to us by the House at this particular time. That is my problem in looking at the motion that has been brought to us.

My question to you, Mr. Kellock, is if we found a breach of privilege of the actual physical service of the document, where does it go from there?

Mr. Kellock: As I understand it, this committee is empowered to inquire and to inquire only, and to report to the House. Any action is up to the House.

On your other point, I would say the question of the commencement of the action, or the commencement of the application for leave to prosecute, is not a question that's been referred by the House to this committee. It probably doesn't make any difference, because if the commencement of the action by itself was deemed to be a molestation, then almost by definition the service of the documents by which that proceeding was commenced would also be.

I'm really not clear why it makes any difference to the committee whether there is a need to consider whether the commencement of these proceedings themselves amount to a breach of privilege. Because, surely, if that is the case, then it follows the service is equally a breach. If there is a difference, then it would be my view that the commencement of the proceedings is not before this committee, but rather the service of the documents that followed upon the commencement of one proceeding and the expressed intention to commence another proceeding.

Mrs. Scrivener: Mr. Chairman, it seems to me the motion as proposed by Mr. Nixon, and which was then endorsed by the House, which is our term of reference in this committee, was simply a motion which was prepared in the light of what it was thought was required of this committee. The fact that the committee investigates the matter, and perhaps the matter is slightly broader than the motion, is something I would think would be within the discretion of the committee in terms of its reference back to the Legislature.

It occurs to me that had the Legislature realized the breadth of this investigation, it probably would have amended the motion to provide for that. If I could direct you to the second paragraph of the motion, it says that "before the said select committee of such persons and the production of such papers and things as the committee may deem necessary for any of its proceedings and deliberations for which the honourable Speaker may issue his warrant or warrants." As a standard phraseology that's being used in many other instances, it's intended to provide a committee with the breadth it requires for an investigation into a particular matter. I would suggest to you that perhaps this committee should at least have the discretion to be able to carry out this investigation so it is reporting back to the Legislature as efficiently as possible.

Mr. Chairman: Okay. I should offer my opinion in this instance since I will be making rulings on whether or not things are proper. It's my opinion this committee is dealing with the matter of privilege. We will ascertain whether a member's privilege has been breached.

That matter was properly raised by the member in the House. The Speaker addressed himself to that. The House, subsequent to that, made a formal motion and referred the matter to this committee. It's my view this matter of privilege, in that rather broad term, is before this committee.

I am not prepared to listen to arguments or questions about whether slander or libel occurred, but I am prepared to hear all questions and all witnesses regarding the matter of the member's privilege. There are some difficulties which will be pointed out, I would imagine, as we go through this, on this specific motion. None the less, I think it would be unfair for this committee not to deal with what is clearly before it, and that's the matter of a member's privilege.

We will deal with that in a legal and in as precise a way as we can, but we will not be deterred from that by anything, frankly. That's the routine we will go through and on which the rulings will be based. So long

as questions are raised in this committee that deal with the member's privilege, they are in order. In my view, if you stray outside of that and you enter into the substance of whether something slanderous was said at any given time, then that's not within the purview of this committee. The committee, of course, enjoys the privilege of appealing the rulings of the chair on each ruling I might give. Is that understood and agreeable?

Mr. Bolan: I agree with what you are saying, Mr. Chairman. It certainly is not my intention, as a member of the committee, to get into the merits of the case. However, I want it left open that I do have the right to inquire of witnesses as to what course of action they took which may amount to a molestation, because we are asked by the motion to deal specifically with whether or not a breach of section 38 has taken place. That's precisely what it says, "contrary to section 38 of the Legislative Assembly Act."

Mrs. Scrivener: I think examining the whole matter of molestation will also assist us to determine the extent of the breach.

Mr. Chairman: I want to assure you, Mr. Bolan, you always retain the right to inquire, I retain the obligation to make a ruling and the committee retains the right to make that subject to appeal.

If we have done our bit with the legal system for the morning, I wonder if we could proceed.

Mr. Bolan: I have something else to raise. I am sorry. I don't want to sound as if I am some form of an impediment to these proceedings, but the chair ruled two weeks ago that counsel for parties affected by these proceedings could not take part in cross-examination during the proceedings.

Mr. Chairman: That is right.

Mr. Bolan: I think, on reflection, that was a sound ruling.

Mr. Chairman: Especially since it was upheld by the committee.

Mr. Bolan: It was upheld by the committee; a doubly sound ruling.

Since then, however, I have had occasion to go through some preliminary discussions which took place between various counsel during the time of the Hydro committee. The question was raised at that time by counsel for Canada Square, Moog, Hydro, and what have you, as to what role counsel for the players, shall we say, could play in the proceedings.

At first, the chairman—this was chaired by John MacBeth, I believe—said that they could not take any part in it. But there then took place a lengthy discussion between the various counsel and between members of the committee. What it was left at in the end—I say this because it was a precedent you might want to follow; I understand this has been followed in the Ombudsman's committee with respect to Pickering, and I understand that there may be some additional witnesses here this morning, parties who are part of the intended action—was that any party affected by the proceedings was entitled to have counsel present.

I am not suggesting that counsel has the right to cross-examine, but that counsel may ask questions through the chair. Supposing, for example, witness A is finished and counsel for that particular witness or for one of the parties would like to draw something from that witness because he does not feel the record would be complete without drawing something more; in that particular committee it was held that counsel could put through the chair, or through committee counsel, a question that would be asked of that particular witness.

Mr. MacDonald: That is what I understood the procedure to be.

Mr. Bolan: No, that is not what I understood the procedure to be here, no. Perhaps we should have clarification on that. You might want to consider this precedent, Mr. Chairman.

Mr. Chairman: I am aware of it and I did take the time and effort to look at other committees and the way that they functioned. Two things impressed me. One is that the nature of their business was somewhat different from ours. The second is that it abrogates the position and the role that a member of this House plays when we extend to others what is rightfully the obligation of the members of the House.

On this committee I ruled that members of the committee may speak—and we researched the precedents on that—and ask their questions formally. All questions are directed through the chair in a formal way. I have given the latitude so that we don't get bogged down with the silliness of writing out questions and preparing things in that way.

In practical terms, I have eyes and I don't see any real restrictions on counsel coming to a member of the committee and offering him a question to ask or advice. It strikes me that is quite an appropriate thing to do. I have no objection to that whatsoever. In practical terms, if counsel for either party thinks a question should be asked, he is quite free to approach a member of the

committee. If we get a little carried away with that, I might get upset, but I don't see any difficulty with it so far.

I have no objection to him placing the information at a committee member's disposal so that they might ask a question.

[10:45]

I am not prepared to yield the floor to anyone other than a member of the committee and I will remain adamant on that point. That gives you considerable latitude. If Mr. Bullbrook or anyone wants a question asked, there are people on the committee who I'm sure will be happy to take that under consideration and ask the question. But I will remain firm on that matter of who gets to ask them. I am prepared to offer that latitude to members of the committee because it strikes me that in our parliament that has certainly been the practice and it will remain that way.

Is that understood and agreeable?

May we now proceed?

We have three witnesses who were invited to the previous meeting and who did not appear at that time. We agreed that we would offer to them the opportunity to appear before the committee now. I will call them in the order of Mr. Seymour, Lorna Moses and Frances Piercey.

Al Seymour.

Albert Edward Seymour, sworn.

Clerk of the Committee: What is your occupation, Mr. Seymour?

Mr. Seymour: International representative of the United Auto Workers Union.

Mr. Kellock: Where do you live, Mr. Seymour?

Mr. Seymour: London, Ontario.

Mr. Kellock: Do I understand correctly that you are one of several intended plaintiffs in a proceeding to be brought in the Supreme Court of Ontario in connection with an alleged libel or slander?

Mr. Seymour: Yes, I am.

Mr. Kellock: And that in that proceeding you instructed the firm of MacLean and Chercover as your solicitors, is that correct?

Mr. Seymour: That is correct.

Mr. Kellock: Specifically who did you instruct?

Mr. Seymour: Lennox MacLean.

Mr. Kellock: All right. Did you at any time discuss with Mr. MacLean the question of how the notice under the Libel and Slander Act would be served on the defendant Riddell?

Mr. Seymour: No.

Mr. Kellock: Did you give any thought at any time prior to the date that document was served to the question of whether or not Mr. Riddell had parliamentary privilege?

Mr. Seymour: Did we give it thought?

Mr. Kellock: Did you personally give any thought to that question?

Mr. Seymour: No.

Mr. Kellock: Were you aware prior to the service of this document that such a thing as parliamentary privilege existed?

Mr. Seymour: No.

Mr. Kellock: We have heard that the International Union of United Automobile, Aerospace and Agricultural Implement Workers of America applied to the Ontario Labour Relations Board for leave to prosecute, among others, Mr. Riddell. Is that correct?

Mr. Seymour: That's correct.

Mr. Kellock: And what if anything did you have to do with the bringing of that application?

Mr. Seymour: It was brought about as a result of discussions that we had with our legal counsel as a result of remarks made by Mr. Riddell outside of the House, derogatory remarks against our organization that in our opinion were unfounded. It was our belief that we should bring that type of action before the Ontario Labour Relations Board and ask for them to determine the right to prosecute.

Mr. Kellock: When you say your counsel, who is that?

Mr. Seymour: Len MacLean.

Mr. Kellock: And you said in your answer "we" discussed these matters; who is "we"?

Mr. Seymour: The members that are named in the document that has been served.

Mr. Kellock: Specifically with respect to that application for consent to prosecute, did you discuss the service of any documents upon Mr. Riddell with Mr. MacLean?

Mr. Seymour: No.

Mr. Kellock: Did you give any thought to how or where the proceedings might be served on Mr. Riddell?

Mr. Seymour: No.

Mr. Kellock: Were you aware at that time that there might be some parliamentary privilege affecting the question of the service?

Mr. Seymour: No.

Mr. Bolan: I have some questions to ask. Mr. Seymour, did you attend at Mr. MacLean's office to discuss this matter with him when this alleged incident took place?

Mr. Seymour: Yes, I did.

Mr. Bolan: Were you in the company of any other intended plaintiffs, or were you alone at that time?

Mr. Seymour: At that time I believe I was alone.

Mr. Bolan: Had you consulted with Mr. White before your attendance at Mr. MacLean's office?

Mr. Seymour: Yes, I did.

Mr. Bolan: Would that be on or about March 15 or 16?

Mr. Seymour: Yes. Around that time.

Mr. Bolan: That was around the time that the notice of action was served, is that right? You are aware that the notice of action was served on March 16?

Mr. Seymour: Yes.

Mr. Bolan: Are you aware of a supplementary notice of action which was served on Mr. Riddell at Queen's Park, at his office on March 31?

Mr. Seymour: Yes.

Mr. Bolan: When did you give instructions to your counsel to prepare a supplementary notice of action for service on Mr. Riddell?

Mr. Seymour: Our instructions were to proceed as he appropriately saw fit. That's right.

Mr. Bolan: This supplementary notice of action, was it based upon additional information which came to your attention?

Mr. Seymour: Yes. I believe you could say that.

Mr. Bolan: Are you aware of a letter which went from Mr. MacLean's office to Mr. Riddell at his office on March 30, making reference to a transcript of a CBC taping? The letter from Mr. MacLean's office to Mr. Riddell referred to this taping and to the letter as supplementary to the notice of action of March 16.

Mr. Seymour: Right.

Mr. Bolan: And did you instruct Mr. MacLean to send that letter of March 30—

Mr Seymour: We had some discussion pertaining to that and as a result of our discussions, that action was taken.

Mr. Bolan: Yes. After that letter of March 30, you then followed it up with the supplementary notice of action under date of March 31.

Mr. Seymour: Yes.

Mr. Bolan: You knew that Jack Riddell was a member of the Legislative Assembly of Ontario.

Mr. Seymour: I was aware of that.

Mr. Bolan: Yes. Were you aware of that from the very beginning?

Mr. Seymour: Yes.

Mr. Bolan: And you were also aware that he was a member from the riding in which the Fleck strike was going on?

Mr. Seymour: Yes.

Mr. Bolan: And were you aware at that time that the provincial Legislative Assembly was in session?

Mr. Seymour: Yes, I was aware of that.

Mr. Bolan: When you gave instructions to your counsel, did you tell him that Mr. Riddell had an office at Queen's Park?

Mr. Seymour: No.

Mr. Bolan: Did you give him any instructions as to where service could be effected?

Mr. Seymour: No.

Mr. Bolan: That's all the questions.

Mr. Chairman: Any questions?

Mrs. Scrivener: May I ask you, Mr. Seymour, when you thought in terms of the service of documents upon Mr. Riddell, how did you regard Mr. Riddell? In what capacity did you regard Mr. Riddell?

Mr. Seymour: As a citizen—on the basis of derogatory comments that he had made outside of the House.

Mrs. Scrivener: But you knew that he was a member of the Legislature.

Mr. Seymour: I was aware of that.

Mrs. Scrivener: And you knew that he made those remarks in his capacity as a member.

Mr. Seymour: Yes, outside of the House.

Mrs. Scrivener: Do you mind explaining to me how you can regard him as a citizen, when he is serving as a member?

Mr. Seymour: It is in my opinion that statements members make outside of the House are made as a citizen, as a resident of a particular area that the plant is located in—and that's my opinion.

Mrs. Scrivener: At what point do you think that Mr. Riddell, as a member, divests himself of his role as a member to become a citizen?

Mr. Seymour: Could you repeat that question?

Mrs. Scrivener: You said outside the House, you made that reference—

Mr. Seymour: Yes.

Mrs. Scrivener: At what point does Mr. Riddell divest himself of his role and style and image as a member, and becomes simply a citizen when he is still a sworn member? Explain to me how he can be regarded as a citizen in that sense. When does this happen?

Mr. Seymour: Well, it happens—it is my opinion that when he is not sitting as a member within the confines of the House.

Mrs. Scrivener: You mean to say, unless he is in the Legislature or in his office? At all other times in your view, he is a private citizen. Is that what you're trying to say?

Mr. Seymour: In the Legislature. I'm not saying in his office. He is an elected MPP and he has the parliamentary privileges as related to statements that he makes within the confines of the Legislature, the House, but not outside the House. That's my opinion.

Mrs. Scrivener: Mr. Seymour, you mentioned that prior to the issuance of the notice of writ, you did have consultation with Mr. MacLean and Mr. White and other colleagues of yours.

Mr. Seymour: Right.

Mrs. Scrivener: During your discussions with them, you discussed then the issue of a writ upon Mr. Riddell. Is that true? Did Mr. MacLean never refer to you at any time, or any other person in those discussions, the fact that there was this matter of member's privilege? Was privilege never mentioned to you at any time by your solicitor, or by any other person in those discussions?

Mr. Seymour: No.

Mrs. Scrivener: Thank you.

Mr. MacDonald: Just one small point: there is an apparent conflict in the testimony that I wanted to clarify. In reply to Mr. Kellock's query earlier as to whether you were aware of parliamentary privilege at all, you said no. Your testimony a moment ago was that you were aware that a person had parliamentary privilege when operating within the Legislature.

Mr. Seymour: Within the Legislature. Yes. I'm aware of that.

Mr. MacDonald: You're aware of that?

Mr. Seymour: Yes.

Mr. MacDonald: Your contention being that if he is acting, as you describe it, as a citizen outside the Legislature, the privilege doesn't exist.

Mr. Seymour: Right.

Mr. Sterling: I just wanted to clarify this in my own mind. I think when Mr. White was testifying before us he had sort of indicated—at least I had taken the assumption from his testimony—that he was basically in charge of retaining counsel and giving instructions to counsel, is that correct?

[11:00]

Mr. Seymour: That would be correct.

Mr. Sterling: I think you were sitting in the office of Mr. MacLean. It was basically Mr. White that was instructing the solicitor?

Mr. Seymour: In consultation with myself and—

Mr. Sterling: Okay. Thank you.

Mr. Bolan: Just to follow up on what Mr. Sterling said, I was under the impression that Mr. White was not in Mr. MacLean's office when the initial instructions were given, but that he was giving instructions by telephone.

Mr. Seymour: Final instructions, that could be, yes.

Mr. Bolan: You gave instructions with respect to the application to the Ontario Labour Relations Board to obtain the consent of the board to prosecute.

Mr. Seymour: Prosecute.

Mr. Bolan: Presumably also you then gave instructions to your counsel with respect to paragraph 26, which forms part of the statement which was attached to the application to the Ontario Labour Relations board. Paragraph 26 reads as follows: "On or about March 14 and 15, 1978, the respondent Jack Riddell, a Liberal MPP, acting for and on behalf of the respondent company . . ." Did you give that information to your counsel?

Mr. Seymour: Yes.

Mr. Bolan: What information do you have, or what information did you have at that time, that he was acting for and on behalf of the company?

Mr. Seymour: The information we had received as a result of the discussions that he had with some of our members who were on picket duty after he had been inside the plant, meeting with members of management. As a result of statements he made to the picketers, we felt that the was acting on behalf of the company.

Mr. Bolan: I see. So it's based on that information which you've just related to me, and that is the information which you in turn, Mr. Seymour, related to your counsel. Is that right?

Mr. Chairman: I'm going to interject here. I'm going to rule that you are straying now off the matter of privilege and into the matter of substance.

Mr. Bolan: Okay.

I have another question but not related to what you have told me I can no longer ask questions about. Referring to the supplementary notice of action which was served on Mr. Riddell on March 31, can you state what that supplementary notice of action involved that the first notice of action of March 16 did not involve?

Mr. Chairman: Just an interjection here. May I see that piece of paper? I don't have it and I don't believe it's been introduced before the committee. If you have a copy I'd appreciate it if—

Mr. Bolan: We do have a copy, yes.

Mr. Bullbrook: What is it that you want?

Mr. Bolan: Supplementary notice of action.

Mr. Bullbrook: All that material has been filed with the committee. Each document that was served upon my client has been filed.

Mr. Chairman: I'm sorry, I don't have it. If Mr. Bolan has a copy of it, I would appreciate having it. Do you have it before you there, Mike?

Mr. Bolan: What I propose to do is to have Mr. Riddell later. I'll call him again as a witness and have him identify this document as the document which he received at his office which was served on his office.

Mr. Chairman: That's fine. In the interim, could you get a copy made for me?

Mr. Bolan: I have some other questions for Mr. Seymour dealing with that supplementary notice. However, it may take a few minutes for the notice to be photocopied and I certainly would want him to see a copy of it before I ask him questions.

Mr. Chairman: I think we would be prepared to let you proceed, Mr. Bolan, and other members may want to come back to this one when they get their copy.

Mr. Bolan: Do you recall from memory what the basic difference was between the notice of March 16 and the notice of March 31?

Mr. Seymour: No. From memory, no.

Mr. Bolan: Would this jog your mind? The supplementary notice of March 31 contained reference to the CBC taping and an article which appeared in the London Free Press.

Mr. Seymour: I believe it was the Globe and Mail article, was it not?

Mr. Bolan: Wasn't the Globe and Mail article the subject matter of the first—

Mr. Seymour: It could be, yes.

Mr. Bolan: Okay. Do you recall now that the supplementary notice of action related to the CBC taping and an article which appeared in either the Globe and Mail or the London Free Press?

Mr. Seymour: Right.

Mr. Bolan: Right. You're also aware that these statements allegedly made by Mr. Riddell and which appeared in the London Free Press and the Globe and Mail always referred to him as "the Liberal MPP" or as "the MPP"? Is that right?

Mr. Seymour: Yes, I believe that's right.

Mr. Bolan: Okay. At the time when you consulted with Mr. MacLean, did you give him any instructions to proceed against the London Free Press and to include the London Free Press as a party defendant in the libel and slander action?

Mr. Seymour: No.

Mr. Bolan: Any particular reason?

Mr. Seymour: No.

Mr. Chairman: That's a little over the border too, I would say. The London Free Press is not here on a matter of privilege.

Mr. Bolan: Those are all the questions I have.

Mr. Chairman: Further questions? Thank you, Mr. Seymour. The committee will now call Lorna Moses.

Lorna Jane Moses, sworn.

Clerk of the Committee: What is your full name, please?

Miss Moses: Lorna Jane Moses.

Clerk of the Committee: What is your occupation?

Miss Moses: I'm an international representative with United Auto Workers.

Clerk of the Committee: Where do you live?

Miss Moses: Deseronto, Ontario.

Mr. Kellock: Is it Mrs. Moses?

Miss Moses: Miss.

Mr. Kellock: Where do you live, Miss Moses?

Miss Moses: Deseronto, Ontario.

Mr. Kellock: Are you an officer of the UAW, either the international union or a local thereof?

Miss Moses: I'm an international representative with the United Auto Workers.

Mr. Kellock: Are you a member of Local 1620?

Miss Moses: No, I'm not.

Mr. Kellock: Are you the Lorna J. Moses who is shown as an intended plaintiff in a

proceeding intended to be brought in the Supreme Court of Ontario and described in a notice of action under the Libel and Slander Act?

Miss Moses: Yes.

Mr. Kellock: Did you personally instruct some solicitor to deliver that notice?

Miss Moses: Yes.

Mr. Kellock: What solicitor did you instruct?

Miss Moses: Lennox MacLean.

Mr. Kellock: Did you discuss with Mr. MacLean where that notice might be delivered to Mr. Riddell, the proposed defendant?

Miss Moses: No.

Mr. Kellock: Were you aware at the time that you instructed the delivery of this notice that Mr. Riddell might have some parliamentary privilege that would be relevant to the time and place of service of such a document?

Miss Moses: No.

Mr. Kellock: Were you aware that Mr. Riddell had any parliamentary privilege?

Miss Moses: I was aware that he had parliamentary privilege in the House.

Mr. Kellock: What did you think the extent of that privilege was?

Miss Moses: I thought it was in the confines of the House.

Mr. Kellock: When you say House, what do you mean by the House?

Miss Moses: In the Legislature.

Mr. Kellock: In the chamber, do you mean?

Miss Moses: Yes.

Mr. Kellock: We have heard today for the first time about a supplementary notice of action over libel and slander. Right? Do you recall discussing that with your counsel, Mr. MacLean?

Miss Moses: Yes, although I can't recall it in detail.

Mr. Kellock: When did you first become aware that there was, or might be, some parliamentary privilege residing in Mr. Riddell that might have something to do with the service of these documents?

Miss Moses: What was that question again, please?

Mr. Kellock: When did you first become aware that there was an allegation, at least on Mr. Riddell's part, that his parliamentary privileges had been breached?

Miss Moses: When I was aware that I had to appear here.

Mr. Kellock: When you got the letter from my office?

Miss Moses: Lennox MacLean told me.

Mr. Kellock: Lennox MacLean told you, all right. Now what, Miss Moses, did you have to do, if anything, with the application for consent to prosecute certain companies and people, including Mr. Riddell, before the labour relations board?

Miss Moses: I was in agreement with what the other officers of our union were doing.

Mr. Kellock: Did you have any contact with Mr. MacLean in connection with that application?

Miss Moses: We had discussed it briefly.

Mr. Kellock: In Mr. MacLean's office?

Miss Moses: I can't remember whether it was in his office or by phone.

Mr. Kellock: Or by phone?

Miss Moses: Yes.

Mr. Kellock: Did you give any thought to the question of parliamentary privilege when you gave those instructions or agreed with the others to give those instructions?

Miss Moses: No.

Mr. Kellock: With respect to the notice under the Libel and Slander Act and the supplementary notice under the Libel and Slander Act, has any action for libel and slander been commenced against Mr. Riddell?

Miss Moses: Been commenced other than here and at the labour board? Is that what you're asking me?

Mr. Kellock: Miss Moses, we know that a notice under the Libel and Slander Act of an intended action was delivered to Mr. Riddell.

Miss Moses: Yes.

Mr. Kellock: Was that intended action ever commenced?

Mr. Bolan: Has a writ been issued?

Miss Moses: Oh, is that what you're asking me?

Mr. Kellock: That's what I'm asking.

Miss Moses: Yes.

Mr. Kellock: A writ has been issued?

Miss Moses: As far as I'm aware.

Mr. Bolan: I just want to get this cleared up. I take it from counsel that the actual writ of summons has not been issued. The witness said that the writ of summons had been issued. I'm trying to find out whether or not, in fact, it has.

Mr. Chairman: Well, to be clear, she said she thought it had been issued, but I'm not sure that she's in the position to know whether it actually has or hasn't. Do you know?

Miss Moses: That's right, I don't know.

Mr. Bolan: Could you inquire of your counsel right now whether or not a writ of summons in the libel and slander action has, in fact, been commenced? I believe that would be proper, Mr. Chairman.

Miss Moses: No, there hasn't been any writ.

Mr. Bolan: I see. Is it your intention to issue a writ of summons in this action?

Miss Moses: Is it our intention?

Mr. Bolan: Yes. Is it your intention; you, as one of the intended plaintiffs?

Miss Moses: Yes.

Mr. Bolan: Is it your intention? You say yes?

Miss Moses: Yes.

Mr. Bolan: Okay. Now, when did you first speak to Mr. MacLean with respect to the notice of action? Do you recall the date?

[11:15]

Miss Moses: Can I remember the date exactly?

Mr. Bolan: Yes.

Miss Moses: No, I can't. I can just take you back into time. It was at the time that Mr. Riddell started to make his statements.

Mr. Bolan: It would be around the time that the notice was issued. It would be around March 14, 15 or 16, or thereabouts anyhow.

Miss Moses: Yes.

Mr. Bolan: And where did you meet Mr. MacLean?

Miss Moses: At his office.

Mr. Bolan: And who were you with?

Miss Moses: I was with some members of the striking local and other representatives of our union.

Mr. Bolan: Was Mr. White with you?

Miss Moses: No. Not at that time.

Mr. Bolan: Was Mr. Seymour with you?

Miss Moses: Yes.

Mr. Bolan: Were any of the other plaintiffs with you? That is to say, was Frances Piercey with you?

Miss Moses: Yes, she was there.

Mr. Bolan: And it was on that date that you gave instructions to have the notice of action served under the Libel and Slander Act. Is that right?

Miss Moses: Yes, we discussed it at that time.

Mr. Bolan: Who was the main spokesman for the intended plaintiffs? Was it Mr. Seymour or yourself, or you know?

Miss Moses: I think it was collectively.

Mr. Bolan: Collectively?

Miss Moses: Yes.

Mr. Bolan: All of you were relating to him incidents which gave rise to your belief that this notice of action should be served on him. Is that right?

Miss Moses: That's right.

Mr. Bolan: You knew at that time that he was a member of the Ontario Legislature?

Miss Moses: Yes.

Mr. Bolan: You knew that he was a member from the riding where the strike was going on?

Miss Moses: Yes.

Mr. Bolan: Did you know that he had an office at Toronto?

Miss Moses: No, I wasn't.

Mr. Bolan: You were not aware of that?

Miss Moses: No.

Mr. Bolan: I see. The meeting where you attended at Mr. MacLean's office, was it called to give instructions to him or did you decide, as a result of discussions with your counsel, to give him instructions? In other words, was it as a result of the discussions which you had with your counsel that you then gave him instructions to proceed with the libel and slander notice?

Miss Moses: No, we were there for the purpose of discussing it.

Mr. Bolan: I see.

Miss Moses: When we thoroughly discussed it, then the action was taken.

Mr. Bolan: Okay. Those are all the questions I have.

Mr. Chairman: Any other questions?

Mrs. Scrivener: Miss Moses, as I understand it, you were a party to the decision to issue the notice of action on Mr. Riddell. At any time, did this matter of privilege come up between you and your colleagues or with Mr. MacLean?

Miss Moses: No.

Mrs. Scrivener: It was never mentioned? The whole matter of privilege was never mentioned?

Miss Moses: No.

Mrs. Scrivener: You served the notice on Mr. Riddell who, it has been well established, was styled as a member of the Legislature. How did you regard him yourself? In what capacity did you regard Mr. Riddell?

Miss Moses: When he was making the statements that he did against our union, I regarded him in the capacity of a citizen.

Mrs. Scrivener: At what point in your mind does Mr. Riddell stop being a member of the Legislature and commence being a citizen when the House is in session and when he is a sworn and duly elected member? At what point does this happen?

Miss Moses: At the time when he is outside of the House.

Mrs. Scrivener: You mean that any time he is not within the confines or the precincts of the Parliament Buildings, in your view he is a private citizen?

Miss Moses: Yes.

Mrs. Scrivener: He does not act as a member beyond the precincts of the Legislature?

Miss Moses: Yes, he would have. He would act as a member then.

Mrs. Scrivener: You think he could? So there's some confusion in your mind as to when he is a member and when he is a private citizen?

Miss Moses: Not really. I felt that he was a private citizen when he made unfounded statements against our union and myself as a person.

Mrs. Scrivener: Why would your union consider him a private citizen in that particular instance?

Miss Moses: Because the statements he was making at that time were unfounded.

Mrs. Scrivener: Were you present when those statements were made?

Miss Moses: No.

Mrs. Scrivener: Did you read about them in the newspaper or hear them on the radio?

Miss Moses: I heard them on the radio and I read them in the newspaper.

Mrs. Scrivener: You also heard that he was referred to as a member when the news item was placed?

Miss Moses: Yes.

Mrs. Scrivener: The news was presented to you concerning Mr. Riddell in his capacity as a member?

Miss Moses: Yes.

Mrs. Scrivener: But you still persist in saying that you regarded him as a private citizen?

Miss Moses: I regarded him as a private citizen, yes.

Mrs. Scrivener: Can you explain to me why you regarded him as a private citizen in that particular isolated instance? What particular thing did he do that made you think he was only a private citizen and not a member?

Miss Moses: The particular thing that he'd done at that time that made me regard him as a private citizen was the type of statements that he was making that really didn't have any fact. I felt that if he had been acting in the capacity of an MPP, he certainly would have had fact behind the statements that he was making.

Mrs. Scrivener: It was only the quality of his statements then?

Miss Moses: That's right.

Mrs. Scrivener: I see. Just one more thing, Miss Moses, you are a plaintiff in this action. Are you a plaintiff in your private capacity or as an officer of your local of the United Auto Workers?

Miss Moses: As both.

Mrs. Scrivener: How can you be both? Explain that to me, please.

Mr. Kellock: That's a legal question. It's quite possible we'll have this cleared up with Mr. MacLean when I examine him.

Mrs. Scrivener: You don't differentiate yourself between being a private citizen or an officer of your local?

Miss Moses: I don't differentiate myself? Is that what you're saying?

Mrs. Scrivener: Yes. You consider that you're two things, that you're participating in this action as an officer of your local and as a private citizen. Right? Do I understand that that is how you regard yourself in this action?

Miss Moses: Yes, I regard myself that way, because as a person I feel that my integrity has been not honoured.

Mrs. Scrivener: But you are also acting as an officer?

Mr. Chairman: I'm having a little difficulty following this.

Mrs. Scrivener: I'm trying to find a parallel in her thinking.

Mr. Chairman: Perhaps I could establish at this point that in the order of notice that was served some are presented as representing the United Automobile Workers and some are presented by name. In legal terms, according to our counsel, some are there as private citizens and some are there as officers of the international union.

Mrs. Scrivener: Miss Moses has already indicated that she considers that she is an

officer of her local in her capacity in her action.

Mr. Chairman: I understand, yes.

Mrs. Scrivener: I'm wondering why you don't simply regard yourself only as a private citizen. Do you consider that you're representing your local when you do this?

Miss Moses: First of all, I'm not representing any local. I'm an international representative with the United Auto Workers.

Mrs. Scrivener: I stand corrected, I'm sorry.

Miss Moses: I feel that there have been statements made against myself as a person and against our international union as a group.

Mr. Kellock: If it's any help in the argument, the union is not a corporation. It is not, therefore, a fictitious person. The only way the union can sue is in a representative capacity. Therefore, the people that are named are named as complaining about a libel on them and a libel on their union. It could have been either/or; in this case, it's both.

Mrs. Scrivener: I'm not so concerned about the legal position—

Mr. Chairman: That's why I allowed your question.

Mrs. Scrivener: —as I am about her frame of mind in terms of how she relates herself as an individual and as an officer, because I think there's a parallel to her attitude towards Mr. Riddell.

Mr. Kellock: I would be surprised if she fully understood the legal implications of suing in a representative capacity. That's the point.

Mrs. Scrivener: Thank you very much.

Mr. Chairman: Mr. Sterling is next.

Mr. Bolan: I just want to raise a point of order here that has to do with the capacity of this intended plaintiff and the other intended plaintiffs. On the style of cause, it is between the four named individuals, "on their own behalf as officers and members of the international," et cetera. It doesn't say on their own behalf or in their own personal capacity and as officers.

Mr. Kellock: It does further down, and Mr. MacLean may tell us that he has left out the "and."

Mr. MacLean: I think that's right, Mr. Kellock.

Mr. Bolan: All right, as long as we have it clear, that's all. I mean, I'm just going by the style of cause here and obviously it does not make reference to the person in their personal capacity.

Mr. Chairman: I attempted to clarify that point. I'll allow the questions because I think that they are reasonably relevant in terms of the privilege matter. We were attempting to clarify the legalities of the situation.

Mr. Sterling: I've just one question following along the lines of Mrs. Scrivener's question. If you had not been an officer of the UAW, would you have been involved in this at all?

Miss Moses: I could have been, yes.

Mr. Sterling: Would you have been, do you think?

Miss Moses: I really can't answer that question. If I had been working at the Fleck plant, yes I could have been involved.

Mr. Sterling: You live in Napanee which is—

Miss Moses: I live in Deseronto.

Mr. Sterling: In Deseronto which is close to eastern Ontario?

Miss Moses: Yes.

Mr. Sterling: But you wouldn't have, under the normal circumstances, been involved in this suit if you had not been an officer of UAW? Is that correct?

Miss Moses: No, you're asking me a question I can't answer. If I lived in the Huron Park area and I was working, I could well have worked in the Fleck plant and be involved.

Mr. Sterling: But you live in Deseronto, so you don't live near the Fleck plant nor were working near the Fleck plant, is that correct?

Miss Moses: That's right, I live in Deseronto.

Mr. Sterling: So you wouldn't have been involved in the suit?

Miss Moses: No.

Mr. Sterling: Thank you.

Mr. Chairman: Any further questions on the part of committee members?

Thank you, Miss Moses.

The other witness this morning is Frances Piercey.

Frances Marie Piercey, sworn.

Clerk of the Committee: What is your full name, please.

Mrs. Piercey: Frances Marie Piercey.

Clerk of the Committee: What is your occupation?

Mrs. Piercey: I work at Fleck Manufacturing plant.

Clerk of the Committee: Where do you live?

Mrs. Piercey: Huron Park.

Mrs. Kellock: Where is Huron Park?

Mrs. Piercey: Where the Fleck plant is.

Mr. Kellock: Exeter or thereabouts?

Mrs. Piercey: No, it is in Huron Park.

Mr. Kellock: Mrs. Piercey, are you an officer of the International UAW?

Mrs. Piercey: No.

Mr. Kellock: Are you an officer of Local 1620?

Mrs. Piercey: No.

Mr. Kellock: Can you help me as to how you purport to represent either one of those two bodies in an intended action for libel and slander?

Mrs. Piercey: I organize inside the plant.

Mr. Kellock: Oh, I see. So you are as of now, or some recent past date, a member of the union? Is that right?

Mrs. Piercey: I am a member of Local 1620. Yes.

Mr. Kellock: Did you personally instruct Mr. MacLean to commence an action on your behalf against Mr. Riddell for defamation?

Mrs. Piercey: Yes.

Mr. Kellock: Were you aware that a notice of action under the Libel and Slander Act would have to be served upon, or delivered to, Mr. Riddell as part and parcel of that proceeding?

Mrs. Piercey: Yes.

Mr. Kellock: Did you discuss with Mr. MacLean where that document would be served or delivered?

Mrs. Piercey: No.

Mr. Kellock: Did you know that Mr. Riddell had some privileges as a member of the Legislative Assembly of Ontario that might be relevant to this proceeding and the service of this document?

Mrs. Piercey: No.

Mr. Kellock: Did you know that he had a parliamentary privilege of any kind?

[11:30]

Mrs. Piercey: I didn't at the time.

Mr. Kellock: Did you have anything to do with the launching of an application before the Ontario Labour Relations Board for consent to prosecute certain people, including Mr. Riddell?

Mrs. Piercey: Would you repeat that, please?

Mr. Kellock: Are you aware that an application was made to the Ontario Labour Relations Board for consent to prosecute Fleck Manufacturing, Bill McIntyre and others, and Jack Riddell?

Mrs. Piercey: Yes.

Mr. Kellock: Right. Did you have anything to do with the commencement of that application?

Mrs. Piercey: Yes.

Mr. Kellock: Did you say you are not an officer of the international union?

Mrs. Piercey: No.

Mr. Kellock: Did you give any instructions to Mr. MacLean, or his partner, or anyone in his office with respect to this application?

Mrs. Piercey: Would you please repeat that to me?

Mr. Kellock: Did you instruct Mr. MacLean to bring this application?

Mrs. Piercey: Yes.

Mr. Kellock: In what capacity did you do that?

Mrs. Piercey: From the statements Mr. Riddell had made on organization inside the plant and outside.

Mr. Kellock: When you instructed Mr. MacLean to do this, did you do that by yourself or did you do it together with other people?

Mrs. Piercey: With other people.

Mr. Kellock: Were those other people Mr. White, Mr. Seymour, for example?

Mrs. Piercey: Mr. Seymour and Miss Moses.

Mr. Kellock: Did you give any thought as to what pieces of paper might be served on Mr. Riddell as a result of that application?

Mrs. Piercey: No.

Mr. Bolan: I have a couple of questions. Mrs. Piercey, you say you had something to do with the giving of instructions on the appication for consent to institute prosecution to the Ontario Labour Relations Board. Is that right?

Mrs. Piercey: Yes.

Mr. Bolan: In what capacity were you giving these instructions in view of the fact that you are not an officer of the UAW?

Mrs. Piercey: Statements Mr. Riddell had made in the newspaper on intimidation and stuff inside that plant when we were organizing. I organized inside the plant.

Mr. Bolan: I realize that, you have told us that. But you are not an officer of the union.

Mrs. Piercey: The officers can't go inside the plant.

Mr. Bolan: I see. Okay, that's fine.

Mr. Chairman: Counsel has asked that one further witness be called this morning. It's Peter Johnson.

The other witnesses are excused. There is still a suggestion they be recalled.

Peter James Johnson, sworn.

Mr. Kellock: Mr. Johnson, I am not all that familiar with the organization in this building. Are you, in a manner of speaking employed by the Speaker's office?

Mr. P. J. Johnson: Yes, you could say that; the Office of the Assembly.

Mr. Kellock: The committee has before it from last day an order in council which was given the number 131/75, dated January 15, 1975, and conferring on the Speaker jurisdiction over certain portions of the legislative buildings as described in Government Services drawings, and the numbers appear in the order in council

Have you looked at the Ministry of Government Services' drawings that are there described to see whether or not the office occupied by Mr. Riddell is in accordance with this order within the jurisdiction of the Speaker?

Mr. P. J. Johnson: Yes. I have the original copy of the drawings which accompanied the order in council. Mr. Riddell's office is in that stated area under the Speaker's jurisdiction.

Mr. Kellock: If anybody is interested, they may look at the drawing.

Can you tell me, Mr. Johnson, from your investigation whether or not this order in council was laid before the Legislative Assembly?

Mr. P. J. Johnson: No. To the best of my knowledge, it hasn't been.

Mr. Kellock: Can you tell me from your investigation whether or not this order in council was filed under the Regulations Act?

Mr. P. J. Johnson: No, it wasn't.

Mr. Kellock: Was it published in the Ontario Gazette?

Mr. P. J. Johnson: No.

Mr. Chairman: Are there further questions from the members of the committee?

Mr. MacDonald: What does that mean? The order in council is not law?

Mr. Kellock: That is a question of argument on which I would not want to pronounce an opinion until I have heard whatever submissions may be made by others, but that is a distinct possibility.

Mr. MacDonald: The implication is that Mr. Riddell's office is not under the jurisdiction of the Speaker because the order in council wasn't legalized—tabled.

Mr. Kellock: If I may put an argument that might be made by somebody else, Mr. MacDonald, section 93 of the Legislative Assembly Act provides that the legislative chamber is within the jurisdiction of the Speaker and such other parts of the buildings as the Lieutenant Governor in Council may designate by order in council. That presumably led to this piece of paper because it recites that it was made pursuant to section 93. Section 93 also says that that order in council shall be laid before the assembly. The Regulations Act defines regulation as being a lot of things but it also includes an order made pursuant to provincial statutes. Unless it is filed and published in accordance with that statute it is, for example, not binding on those who don't have notice of it. Whether it is effective at all is a question of legal argument.

Mr. MacDonald: Am I correct in my assessment of what you are telling me—that the Ontario Legislature is in essentially the same position as a council that passes a bylaw and doesn't refer it to the OMB, which has final jurisdiction over authorizing that bylaw and, until it is so done, the bylaw is not legal and operative?

Mr. Kellock: The analogy may be drawn in some situations but there certainly is an argument to be made that the order in council is not effective. But I wouldn't—that is not my opinion at the moment. I would like to hear what anybody has to say about it.

Mr. MacDonald: Utterly fascinating.

Mrs. Scrivener: Inasmuch as it is in usage and the responsibility and authority is being exercised, to all intents and purposes it is in effect. I think that what you are talking about is simply a procedural piece of business which perhaps provides a legality to the situation, but in effect what we are doing is obeying the order in council as it was intended.

Mr. Chairman: We have a witness before the committee. If you have questions, please direct them to the chair.

Mr. Kellock: Mr. Johnson, what if anything, can you tell us about the usage and the practice, concerning those areas of this building that the Speaker has been in the habit of exercising jurisdiction over?

Mr. P. J. Johnson: The Office of the Speaker has acted as though he has had jurisdiction over those areas and, I suppose, effectively he has.

Mr. Kellock: So he has exercised jurisdiction over the members' offices, including Mr. Riddell's office?

Mr. P. J. Johnson: Yes, I believe so.

Mr. Kellock: Can you tell us anything about the practice and usage prior to the passing of the order in council in question?

Mr. P. J. Johnson: I believe the building, with the exception of the chamber, was under the government at the time. That was the general procedure, to the best of my knowledge. I am not exactly certain, but I believe that was it.

Mr. Kellock: Are you saying that, prior to this order in council, the Speaker restricted himself to the chamber?

Mr. P. J. Johnson: Yes, as far as his jurisdiction is concerned. There are other areas; for instance, the lobbies and areas adjacent to the chamber may be included. But, generally, yes.

Mr. Kellock: Prior to this order in council, to your knowledge, the Speaker did not purport to control the members' offices.

Mr. P. J. Johnson: No, I don't believe so.

Mr. Kellock: Perhaps you can help me with this. The protective personnel that one sees about this building, who do they report to?

Mr. P. J. Johnson: They report to the Speaker, I believe. He does have the jurisdiction for the security of the entire building under him.

Mr. Kellock: Do those personnel exercise control over the whole of this building, including the members' offices?

Mr. P. J. Johnson: Yes.

Mr. Chairman: Questions from the committee?

Thank you, Peter.

Do members of the committee wish to call further witnesses? If so, would you indicate to the chair now who they might be?

Mr. Bolan: Yes, I propose to call two witnesses, Jack Riddell and, following Mr. Riddell, his counsel, Mr. Bullbrook.

Mr. Chairman: Are there any other members who would care to indicate to the chair now that they would like to call further witnesses?

If you recall, we had discussed the matter before. I said we would give the opportunity to call witnesses—Mr. Riddell and Mr. Bullbrook are both here—and we indicated that at today's session we would call any others who remained, and counsel might have suggested further witnesses to call before the committee; we would then offer the opportunity to counsel for both parties to present a summary of sorts before the committee.

If that is your wish, I now have a list of witnesses you want to call and we will adhere to that. It seems quite possible, I guess, that we could now call Jack Riddell.

Mr. Riddell has already been sworn before the committee; it is not customary in the House to do so, but we did it.

Mr. Bolan, will you call the witness? Would you like to proceed with questions?

Mr. Bolan: Mr. Chairman, what I propose to do is to develop in a chronological order the various documents that were served on Mr. Riddell through the course of these proceedings. I don't think the chronological order has been properly established. Furthermore, there would appear to be some documents which have been served on him by mail or personally which are not part of the record, and I think we should—

Mr. Chairman: Could I just interject there?

Mr. Bolan: Yes, by all means.

Mr. Chairman: Are you making reference to anything further than the supplementary notice of action which the members of the committee should have?

Mr. Bolan: Yes.

Mr. Chairman: Other documents?

Mr. Bolan: Unless there is a letter there from the firm of MacLean and Chercover under date of March 30.

Mr. Chairman: I have a letter—

Mr. Bolan: Do you have that letter?

Mr. Chairman: I do.

Mr. Kellock: Mr. Chairman, at the conclusion of the proceedings, I was going to read into the record the list of documents that I understand all members of the committee were provided with before this inquiry commenced so that the record would be clear. If you would like, I can do that now, including—

Mr. Chairman: Would that be agreeable?

Mr. Bolan: I think it would be a good idea if counsel could read now the documents which are part of the record.

Mr. Chairman: Then it's agreed.

Mr. Kellock: The first document, then, is a statement of facts which was read into the record on the first day.

Secondly, there is a notice of action issued by MacLean and Chercover under date of March 15, 1978, and the style of cause is referred to in the statement of facts.

Next is a transcript of an interview on CBC radio between Mr. Riddell and some interviewer, which was aired in Toronto at approximately 9 a.m. on Wednesday, March 15, 1978.

[11:45]

Mr. Bolan: Does that have a covering letter from MacLean and Chercover under date of March 30?

Mr. Kellock: This is chronological.

Mr. Bolan: Okay, fine.

Mr. Kellock: That appears later on.

Next is an application to the Ontario Labour Relations Board for consent to prosecute, among others, Mr. Riddell, dated March 16, 1978, and signed on behalf of the United Automobile, Aerospace and Agricultural Implement Workers of America International Union; to which is attached appendix B, a document of some 16 pages.

Next follows a notice of application, form 25 under the Labour Relations Act, signed by Mr. Aynsley, the registrar of the Ontario Labour Relations Board and addressed to the respondent, Jack Riddell. That is dated March 20, 1978.

Next is a letter written without prejudice, apparently, by Mr. Bullbrook to Messrs. MacLean and Chercover, dated March 20, 1978.

Next is a letter from the registrar of the Ontario Labour Relations Board, addressed to Mr. Riddell and dated March 20, 1978.

Next is a reply to the application for consent to institute prosecution issued by Borden and Elliot, solicitors, for two of the respondents, to which is attached appendix A, a one-page document.

Next is a reply to the application for consent to institute prosecution issued by Borden and Elliot on behalf of William George Freeth, attached to which is exhibit A, two pages.

Next is a reply to the application for consent to institute prosecution issued by Borden and Elliot on behalf of the respondent McIntyre, to which is attached exhibit A, a document of two pages.

Next is a letter from W. John Dunlop addressed to Mr. Jack Riddell. It is very hard to read, I am sorry. It is dated March 29, 1978.

Next is a letter dated March 29, 1978 from the registrar of the Ontario Labour Relations Board to Mr. Riddell.

Next is the supplementary notice of action produced this morning, dated March 31, 1978, and issued by MacLean and Chercover. The style of cause would appear to be the same as that of the original notice of action.

Next is a letter dated March 30, 1978, from MacLean and Chercover to Mr. Riddell.

Next is a letter dated March 31, 1978 from the registrar of the Ontario Labour Relations Board to Mr. Riddell.

Next is a reply to the application for consent to institute prosecution dated March 30, 1978. It seems to be signed by Mr. Sargeant on behalf of Grant Turner.

Next is a reply to the application for consent to institute prosecution signed by Mr. Sargeant on behalf of Fleck Manufacturing.

Next is a letter from Mr. Bullbrook from MacLean and Chercover dated April 3, 1978. Also before the committee are the proceedings of the assembly dated April 4, 1978, concerning Mr. Riddell's privilege.

The second last document is the proceedings of April 6, 1978, containing the motion that referred this matter to this committee.

Lastly is the order in council number 131/75.

All those documents, Mr. Chairman, are before the committee.

Mr. Chairman: Mr. Bolan, would you like to proceed?

Mrs. Scrivener: Mr. Chairman, just before we proceed, may I indicate to you that I would like to have Mr. MacLean and Mr. White also recalled.

Mr. Chairman: I would point out to you that I don't believe Mr. White is here today.

Mrs. Scrivener: Mr. MacLean then.

Mr. Bolan: For the record, I will be introducing through Mr. Riddell two other documents in the form of telegrams forwarded to Mr. Riddell from the Ontario Labour Relations Board. Would you like them now?

Mr. Chairman: Yes. We will make copies of these documents.

Mr. Bolan: Mr. Riddell, you have already told us that you are a member of the Legislative Assembly of Ontario, and you have heard described by the committee's counsel the various documents which were served on you, either at your office or on you or by the mail. Dealing, first of all, with the chronology of these various documents, could you tell us when the first notice of action came to your attention?

Mr. Riddell: The first notice of action was delivered to my office on March 16, hand delivered, presented to my secretary, and when my secretary endeavoured to get more information about it, for some reason she was flatly refused. The person who delivered the document simply came in, kind of threw it on the desk and went out. I don't recall whether it was a committee meeting I was at—I was away from the office at the time—but when I came back to the office my secretary presented me with this first notice.

Mr. Bolan: Do you recall what day of the week it was?

Mr. Riddell: I believe it was Thursday, March 16, if I recall correctly.

Mr. Bolan: At that time was there a strike going on in your riding?

Mr. Riddell: Yes, and with your indulgence if I may I will just elaborate a little on this. When the Fleck strike first started I was out of the country and I didn't realize that there was a strike until I returned on March 9; when I was able to get near a radio I then learned that Fleck Manufacturing was out on strike. I returned then on March 9, which I believe was a Thursday. I had to attend a convention in Toronto that weekend and at that convention were a number of my constituents as well as a number of my colleagues in attendance.

It was then that I learned what had gone on. I learned that there had been some allegations made in the Legislature about police involvement, about Fleck involvement, in the strike. I learned from constituents at the convention that there were a number of things said, one of which was one of the girls apparently on strike said: "Well, wait until Mr. Riddell gets back and we will soon settle this business of the workers going into work."

Mr. Bolan: Did you feel that as a member it was part of your obligation and your duty to inquire further of this incident and particularly of this constituent?

Mr. Riddell: I certainly did, and that was the reason that I went out to the plant the following Monday, the Monday after the convention. I drove my car through the picket line and I stopped and got out and talked to three people who were out on the picket line. I listened to what they had to say, I questioned them a little about the alleged police brutality. I endeavoured to get as much information from them as I could and I informed them that I was also going into the plant to endeavour to talk to the management as well as to those employees who were reporting for work every day. And that is exactly what I did.

After I talked to the workers on the picket line I went in and I talked to management after having to go through the security guard. I didn't know who management was. I had never met Mr. Turner, who I understand is the vice-president. I had never met him before. The security guard asked me who I was and he wasn't going to let me in the door until I indicated that I was the member representing the riding of Huron-Middlesex. I trusted he realized that Huron Park was owned by the Ontario government and therefore surely a member does have some involvement as to what takes place out in an area which is owned by the government.

Apart from that I happen to represent a riding that is industry-deficient. I had gone through, when I was first elected, the bankruptcy of Hall Lamp which employed somewhere in the neighbourhood, I believe, of 400 people at that time; and I thought, "My goodness gracious, we've got to look after the industry that we do have in the riding."

That is why I went in—to find out just what was going on, because I had been away when the strike first took place. There had been a number of allegations made, and I felt that it was my obligation to look into it—to find out whether such allegations were well founded. I felt I was obliged to get as much information as I could from workers on the picket line, workers in the plant and management.

Mr. Bolan: And did you do this in your capacity as the member for the riding?

Mr. Riddell: Absolutely. If I was not the member of the riding I don't think I would have been the least bit concerned about a strike out at Fleck in Huron Park.

Mr. Bolan: You say that on the date when the notice of action was served on you on March 16 you were in the House? You were here in the Legislative Assembly?

Mr. Riddell: Yes, I was.

Mr. Bolan: And aside from your regular duties in the House were you involved in any committee work?

Mr. Riddell: Yes. I had been very busy as a member of the committee which was asked to study clause-by-clause Bill 70, the Occupational Health and Safety Act. We sat right from the beginning of the year through to, if I recall, the end of February. I would dearly have loved to have gone away for a week prior to the Legislature going back into session, but I was unable to do so because I was on the committee studying that bill. That is the reason that I took a week, after we completed the bill; to take my wife and go for a holiday. When I returned it was then that I learned that Fleck was on strike.

So I was involved in that committee. I am also a member of the resources development committee before which I believe the Ministry of the Environment estimates were coming, followed by the Ministry of Natural Resources estimates, followed by the Ministry of Agriculture and Food estimates. I think you realize that I am the Liberal agricultural critic and it takes considerable preparation to get ready for these estimates. Believe me, my plate is overflowing with constituency work and legislative work. When I started receiv-

ing these notices I was greatly disturbed. I was greatly annoyed, and I felt that I was hampered in what I could do back in my own riding.

Mr. Bolan: Did you consider service of these documents on you as an interference in your capacity as a member?

Mr. Riddell: Yes. I feel that I haven't been able to provide the type of service out in the Huron Park area that I would like. I have had people from Huron Park phone me to ask me if I could meet with them. Normally I would go out there and meet them at their place of convenience, but I felt that every time I went out there I received another notice saying, "We notice that you were out talking to the workers on the picket line."

[12:00]

They sent me a supplementary notice, and I felt that if every time I go up there I am going to get another notice from the labour board then I am not going to go out. So I had to say to these people, "I would much prefer that you come to my home to meet me." So they started then coming to my home. I was also receiving phone calls, one as late as just yesterday, from the husband of one of the girls who works at the plant.

Mr. Bolan: Don't get into any conversations that you had with any of these people.

Mr. Riddell: I was just trying to say that I almost had to tell him that I could no longer become involved, that I really couldn't give him the type of service that I would like to give him. That is not doing me any good as a member because they expect that I should give them service. Furthermore, if he feels that I am neglecting my responsibility it is certainly not helping me when I endeavour to run the next time in the riding.

Mr. Bolan: In so far as your work on the committee dealing with Bill 70 is concerned, which is for all intents and purposes a labour bill—it very much affects people in the labour field—what effect have these proceedings instituted against you had on you as a member of that committee?

Mr. Riddell: Since we completed clause-by-clause study of Bill 70 there have been a number of delegations wanting to meet with the Liberal members on the committee, as I am sure they did the NDP members and the Conservative members on that committee. I'll tell you that I had to miss meeting some of these people—union people, OPSEU, CUPE. I had to miss meeting some of management simply because I was tied up with this case. I was either tied up by having to go to see my lawyer in Sarnia to discuss the matter, or I was tied up because my lawyer in Sarnia was here in Toronto. As a result of all this I had to miss meeting some of these people who wanted to come in to discuss Bill 70.

Mr. Bolan: If I might just have your indulgence—

Mr. Chairman: I don't want to intervene here but I'm having a little difficulty going from Bill 70 to this point of privilege.

Mr. Bolan: Absolutely. In other words, the man can't properly do his work.

Mr. Chairman: I'm not even going to pass—

Mr. Bolan: If I might just have your indulgence for a half a moment.

Mr. Bullbrook: I understand I am permitted to direct some questions.

Mr. Chairman: Oh yes.

Mr. Bolan: When you returned from your holiday and you heard about this strike in your riding I understand that you had a meeting with some 13 people who were involved in this. Without getting involved in any of the statements which may have been made by them, what can you tell us about that?

Mr. Riddell: I met at the request of workers. This was the Tuesday that the employees from—was it Windsor?—came to the plant to beef up the picket line. I think there was something like 1,000 that came. The vice-president of the plant apparently closed the plant down that day. My office was swamped with calls. They wouldn't leave their name but my secretary did make a note of their comments, a copy of which I have here. But they insisted that I go out to the plant and talk to them.

I said, "I can't get out until Friday because the Legislature is sitting but I will endeavour to go out on Friday." So I went out Friday and I went in at what I considered to be a convenient time for the workers—it was at their lunch period—and I said, "All right. What are the complaints?"

This is when the workers started to tell me facts about the case, right from the time that there was some consideration being given to establishing a union out at the plant. They got up, one after the other, and proceeded to inform me about their dissatisfaction.

This was really, in some cases, confirmation of what I had been told long before, say, the strike ever began. I attend many functions in my riding and I not only had workers out there but some parents indicate to me what they considered to be the unsatisfactory way that the union got established out there. So I was knowledgeable about this, but I didn't really pursue it until the request started

coming in from the workers, insisting that I go out there and listen to what they had to say, and that's exactly what I did. Anything that I said in the Legislature was a further elaboration of questioning that I put in the House, simply reiterating the things that the workers had told me when they invited me out to listen to their complaints.

Mr. Bolan: So what you're telling us is that, as a result of these various statements which were made to you, you then made the statements which are the subject matter of this libel and slander action.

Mr. Riddell: That is correct, and I have a number of signed statements by the workers at the plant, confirming exactly what they said and what I had reiterated.

Mr. Bolan: After service of the notice of action on you on March 16, did you consult with a lawyer?

Mr. Riddell: Yes. Before so doing, I consulted with one of my colleagues, in whom I place a great deal of respect, for his judgement. We talked about it. He even suggested which lawyer I should contact, and I went on his suggestion and contacted my lawyer, Mr. Jim Bullbrook.

Mr. Bolan: Following service on March 16, were other documents served on you?

Mr. Riddell: Oh yes.

Mr. Bolan: In other words, all of the documents referred to by counsel, or the various—

Mr. Riddell: Yes. All the ones—I've been swamped with mail. This is all the mail that I've received, and in addition to what the committee counsel has indicated, I received two telephone calls and they repeated what was found in the telegram. They simply said that there would be a telegram coming and they outlined what the information was in the telegram and they said, "This will be followed by the delivery of the telegram to you." So one of the telegrams was sent directly to my home and one was sent to my constituency office. These telegrams were advising that the hearings of the Ontario Labour Relations Board will take place at such and such a place, such and such a time.

You know, I can handle these things, but it somewhat disturbs my wife and my children to be getting these calls and having to inform me when I come home from the Legislature that "there was somebody phoning you about a telegram and that they'll be calling back." As far as I'm concerned, it has interfered greatly with my work as a member. I really think I've been hampered in providing the type of service that I should be providing.

Mr. Bolan: Was one of these telegrams sent to your constituency office?

Mr. Riddell: One was sent to my constituency office. Apparently, they had my address on it, but it was stroked out and my constituency office number was written in. The other one was sent directly to my home: RR 1, Hay.

Mr. Bolan: Now I'd like you to go through all of the documents which were served on you, either personally or on your office or which you received by mail. Do you have a list of them in front of you? And what you did, as a result of each document being served on you.

Mr. Riddell: Well, I haven't made a list of them, Mr. Chairman, but I think I do have them in some order. I was served with the notice of intention to sue under the Libel and Slander Act. That came on March 16.

Mr. Bolan: Was it as a result of that notice that you consulted with Mr. Bullbrook?

Mr. Riddell: Yes.

Mr. Bolan: And where did that consultation take place?

Mr. Riddell: I phoned him from my office and reached him at his office in Sarnia. I told him what had happened and asked him if he would be interested in serving as my counsel.

Mr. Bolan: Yes, and what is the next document, sir? Just go through them in chronological order.

Mr. Riddell: The next document dated March 20 was received in my office March 22. There is a possibility that I don't have all of these documents, because every time something came to my office, I turned around and sent it by mail or delivered it to my lawyer. I placed the entire matter in his hands. The reason for so doing, as I have already indicated, was my cup overfloweth with constituency and legislative work. I simply said to Mr. Bullbrook, "I want you to handle this matter for me". There is a possibility that I don't have all of the documents in my possession because I sent or I took the originals when I went to his office with me and I gave them to him.

Mr. Bolan: After you phoned Mr. Bullbrook about the notice of action, did you then see him?

Mr. Riddell: Yes.

Mr. Bolan: Do you recall that date and where?

Mr. Riddell: I believe I saw him in his office. I believe it was a Monday. Following the week that I contacted him, he asked if I

could go to Toronto by way of Sarnia in order to meet with him on this matter. I did, and I think we met for most of the morning, which again made me late for the Legislature that afternoon.

Mr. Bolan: Whatever documents you do have were served and, as a result of these documents being served on you, what did you do?

Mr. Riddell: Each time I was served with a document—this is another one, dated March 20, notice of application for consent to institute prosecution. This was sent to me by D. K. Aynsley, registrar of the Ontario Labour Relations Board.

Mr. Bolan: Was this the first time that it was brought to your attention that an application was being made to seek the consent of the Ontario Labour Relations Board to prosecute?

Mr. Riddell: Yes.

Mr. Bolan: As a result of being served with that document, what did you do? Did you speak to Mr. Bullbrook about that?

Mr. Riddell: I believe I put it in the mail. I simply wrote a short letter saying I had received this and "I leave it to you."

Mr. Bolan: When did you first see him about that particular document, about that application to prosecute?

Mr. Riddell: I don't know if I can tell you. I believe it was a Friday. Any time that I met Mr. Bullbrook, we endeavoured to arrange such meetings for a Monday or a Friday so that it would not interfere too much with my legislative responsibilities. I believe it was the Friday following the date of receipt of this, which was March 22.

Mr. Bolan: What other documents were served on you? What else do you have there?

Mr. Riddell: I received carbon copies of all the letters that my lawyer sent to MacLean and Chercover. I was left a note by my secretary that CBC was endeavouring to contact me to get my permission to play back the Metro Morning interview, which was done with David Schatzky. This was done from my office, he contacted me, phoned me, and interviewed me while I was in my office.

[12:15]

I received a letter from a Mr. John Dunlop of the Canadian Broadcasting Corporation dated March 20. In it he stated, "I thought you should know that we played back the Metro Morning Interview that you did with David Schatzky, which we invited you attend on March 29 at 2:30 p.m. for John McNamee, who claimed to represent the workers at the Fleck Manufacturing Company."

I don't know how this worked because when I was contacted to either attend when they played back this Metro Morning, or to give my permission, once again, I left everything in the hands of my lawyer, I simply relayed the information, whether he was in his office at the time I'm not sure, I had to go through his secretary and dictate some things so she could pass it on to Mr. Bullbrook. I'm not sure what Mr. Bullbrook said, but I certainly didn't give any permission. I'm assuming that maybe he did, but I received this letter saying they played the interview back. So that's more of the type of information I was getting in connection with this case.

March 29; a letter sent to me at my Queen's Park office, from a Mr. Aynsley says, "Enclosed herewith are copies of reply to application for consent to institute prosecution filed by the solicitor for Bill McIntyre, Bill Freeth, and Ray Glover in the above matter." Not being a lawyer, I'm certainly not versed with all these forms, but it's a reply to application for consent to institute prosecution.

Mr. Bolan: Well, okay, I don't think you have to read that. In any event, those were forwarded again to you at your office at Queen's Park. Is that right?

Mr. Riddell: That's right. Here's another one, dated March 30, addressed to me, at my office here, room 121 Northwest, Legislative Assembly. Again, "Pursuant to the notice of action," and the bottom line of the first paragraph, "and is intended to be supplementary to the notice of action in this matter." I trust you don't want me to read all this.

Mr. Bolan: No, that's the letter which is referred to by counsel under date of March 30.

Mr. Riddell: A letter, dated March 31, received in my office April 3, was directed to me at my office at Queen's Park.

Mr. Bolan: Who is the author of that letter?

Mr. Riddell: The author is D. K. Aynsley, registrar of the Ontario Labour Relations Board. "Enclosed herewith are copies of reply to application for consent to institute prosecution filed by the Industrial Relations Institute for Grant Turner and Fleck Manufacturing Company in the above manner." Here again there are forms, "Reply to application for consent to institute prosecution."

Mr. Bolan: As you were being served with all these various notices, letters, and what-have-you, were you relaying them to your counsel?

Mr. Riddell: Yes.

Mr. Bolan: Were you advising your counsel of all this?

Mr. Riddell: Yes.

Mr. Bolan: Incidentally, from the time of the first service of the notice of action until this date, on how many occasions have you met with your counsel on this matter?

Mr. Riddell: On numerous occasions. Twice, if not three times, in his office in Sarnia. And numerous times when he was in Toronto. He made a special trip to Toronto to meet with me. I couldn't begin to tell you how many times I've met with him.

Mr. Bolan: Do you have any other reference to other documents or letters there?

Mr. Riddell: A letter dated April 4, to "Mr. Jack Riddell"—this time sent to my home, RR 1, Hay, from Mr. Aynsley—"Dear Sir:"

UAW and Fleck Manufacturing Company, Bill McIntyre et al. "For your information I am enclosing herewith a copy of a letter dated April 3, 1978, which has been received from the solicitors for the applicant in the above matter."

Mr. Bolan: Okay, what else do you have there?

Mr. Riddell: A copy of a letter that was sent from MacLean and Chercover to my lawyer, Mr. Jim Bullbrook, entitled "White et al versus Riddell." A letter dated April 6, sent from the registrar of the labour relations board to my lawyer, Mr. Jim Bullbrook.

Mr. Bolan: Did you get a copy of that letter?

Mr. Riddell: Yes, this is a copy.

Mr. Bolan: And again at your office at Queen's Park?

Mr. Riddell: No, they had this one RR 1, Hay, my home.

Mr. Bolan: They had switched by then.

Mr. Riddell: There is a letter dated April 10 which got delivered from MacLean and Chercover, attention Mr. D. K. Aynsley, registrar. It is a copy of a letter which I received.

Mr. Bolan: In other words, you were receiving copies of correspondence between your counsel and Mr. MacLean's office?

Mr. Riddell: I would hazard a guess that I probably received a copy of every bit of correspondence that has ever been sent out on the matter, which I have to read and which takes time away from my responsibilities here in the Legislature.

This is a letter dated April 10 written to Mr. James Bullbrook from MacLean and Chercover, "White et al versus Riddell". This is a copy of a letter dated April 11 from a Mr. Sargeant to D. K. Aynsley.

I received a copy of a letter dated April 12. This is a letter from my lawyer, Mr. Bullbrook, to MacLean and Chercover. There is a letter dated April 12, a letter from my lawyer to Mr. D. K. Aynsley, registrar, Ontario Labour Relations Board. There is a letter dated April 12 from Mr. D. K. Aynsley from my lawyer, a copy of which I received. There is a letter dated April 13—

Mrs. Scrivener: Mr. Chairman, with all due respect, I think the point is well made that Mr. Riddell has been the recipient of a great deal of correspondence and legal documentation in connection with this case. I am wondering in terms of the time if we could move along?

Mr. Chairman: I agree. The reason I offered so much latitude is this is the member who has raised the question of privilege. The chair would not want to be seen in any way to restrict his right as a member of this House to present his case as fully as possible. I would perhaps concur with Mrs. Scrivener that his point has been made.

Mr. Bolan: I agree with both of you.

You took a certain position—and I don't want to get into the merits of it—with respect to the strike at the Fleck plant, is that right?

Mr. Riddell: No, I don't think that I was taking any position. I was out to get as much information as I possibly could.

Mr. Bolan: As a result of these proceedings that were commenced against you, did you in any way feel that you were being hampered or prevented from getting that type of information which you needed to properly represent your constituents?

Mr. Riddell: After making, I think, three appearances, as I did at the site, and after every appearance getting another notice of action, bringing to my attention that I had stopped and I had talked to the girls on the picket line and I had made certain statements and what have you, I just felt that if I am going to be served with something every time I go out, I won't bother going out.

I might also say at the time there was a teachers' strike in the riding. I was plagued with a teachers' strike, meeting with trustees and meeting with the teachers. I felt if there was any way that I could render some assistance in the Fleck dispute by acting as a mediator, if that was the case, not taking any sides, but hoping to bring about a settlement so that we could return our quiet part of the country back to its usual serene type of environment, then that was surely my obliga-

tion as a member. But every time I went out there and got another notice of action, I just said that's it.

Mr. Bolan: I have no further questions of Mr. Riddell, unless other members do.

Mr. Chairman: Mr. MacDonald and then Mr. Kellock.

Mr. MacDonald: In that order?

Mr. Chairman: Yes.

Mr. MacLean: I wonder if I may address the committee.

Mr. Chairman: Not just now. You have been called as a witness. You will, but not at this point.

Mr. MacLean: I am addressing the committee, sir, as counsel for the respondents in this proceeding. I wonder if I can be heard?

Mr. Chairman: No, I'm sorry, that is not in order at this time. It will be in order shortly, but not at this time.

Mr. MacLean: I wonder, Mr. Chairman, if I could ask one of the members of the committee if I might consult with him.

Mr. Chairman: I'm going to have to call this thing to order. I explained very clearly at the beginning of this meeting that I am quite prepared to let counsel or anybody talk to a member of the committee, and the question can be put then. But we do have a witness before the committee at this point in time and we have proceeded that way all morning and we will continue to proceed that way. Mr. MacDonald has the floor.

Mr. Bolan: On a point of order.

Mr. Chairman: Yes, Mr. Bolan?

Mr. Bolan: I see nothing wrong with Mr. MacLean speaking to any member and to putting a question—

Mr. MacLean: That's what I just said.

Mr. Bolan: —to the member. I can't see anything wrong with that at all.

Mr. Chairman: If you would care to exercise it in that way, I have no objection to it, but Mr. MacDonald has the floor.

Mr. MacLean: Mr. Chairman, I—

Mr. Chairman: No. Order, now. Mr. MacDonald.

Mr. MacLean: Mr. Chairman, with all respect, I have a client to represent and I am doing my best. I will abide by the ruling of the chair but, as I say, I have a client to represent. There's quite an interest in the proceedings.

Mr. MacDonald: Let me say, Mr. Chairman, through you to Mr. MacLean, if he has a question invite him to come up here and sit down and I would be glad to pass it on.

Mr. Chairman: That's right. Exactly.

Mr. MacDonald: Meanwhile, I have some questions that I would like to ask Mr. Riddell.

You related how you went out and spoke to people on the picket line and then you went through the picket line and you went in and you spoke to members of management. You were doing this all in your capacity as a member of the Legislature. I find that wholly unobjectionable. That I think is fulfilling the rights of a member. I have done it myself. I didn't always get the privilege of going in to see management, but at least I have attempted to get both sides of the story. But my question to Mr. Riddell is this: "Did you not go further and make statements which in the view of some people are libellous and, therefore, they have taken action?"

Mr. Chairman: That is off the privilege point and into the substance of what might be in another jurisdiction.

Mr. MacDonald: Let me rephrase it and I think I can get back into the privilege.

Mr. Chairman: All right.

Mr. MacDonald: When you made statements that other people deemed to be libellous—and they have taken the appropriate kind of action under our law—did you feel that you had immunity to make those statements out there?

Mr. Bolan: I'm sorry, with the greatest of respect, Mr. Chairman, you are getting into the question of intent of the member. And, again, I suggest to you that it is going to the merits of the main actions and that it is not proper. Perhaps you may consult with counsel on it.

Mr. Chairman: I beg your indulgence for a moment.

Mr. MacDonald: Mr. Chairman, my problem is that I find—

Mr. Chairman: I am going to rule that the question put by Mr. MacDonald is in order. I heard him, at the end of the question, asking the question of immunity which begs the question of privilege. We have listened throughout the morning to various members of the committee ask various witnesses about their intent and about whether they were aware of privilege or immunity or what not. And it strikes me that this is slightly different, that it does deal with the matter of privilege and does not deal with content subject to any other jurisdiction. And so I will rule that the question is in order.

Mr. Riddell: In answer to the question, Mr. Chairman: I was elected in 1973 and at that time Mr. Allan Reuter was the Speaker. It was my understanding—and I stand to be corrected—that Mr. Reuter considered the area outside the Legislature to be an area where a member still had privileges.

[12:30]

Now, when I raised my questions in the House—and I believe Mr. MacDonald was there—I was sent notes from outside, from news media people asking for an interview. So I went out and I was asked to elaborate on the line of questioning which I had posed in the House. Apparently, they weren't satisfied with that and so they proceeded further to ask such questions as, "Why, if there is a union certified out there, are there so many workers going into work?" That is when I simply reiterated what I had been told by some of the workers as to the means in which union certification took place. I simply reiterated what I was told. I was elaborating on my line of questioning in the House when asked to expound on that by the news media people outside the House.

As I have indicated before, it was my understanding, under Allan Reuter as Speaker, that you had privileges just outside the Legislature as well as in. That is the best I can do on that.

Mr. MacDonald: In some of your earlier testimony, Mr. Riddell, you were making value judgements and commenting on the substance and validity of what had gone on. Were you aware, for example, that the union had been certified and was legally established as the bargaining unit?

Mr. Chairman: I am going to rule that that one is out of order, because that does not deal with privilege. I understand that we are having difficulties with these dividing lines but I am going to attempt as best I can to keep the questioning to the matter of privilege which is before the committee and to rule out of order other matters which don't deal with that. If you want to go to work on ruling the privilege routine in, that's fine.

Mr. MacDonald: Mr. Chairman, I have a problem. The testimony so far has got into the merits of the case. The member has indicated that he talked with people and he came to the conclusion that the practices that were used in certifying the union were questionable. He was raising doubts as to the validity of the legality of the union. That's in the merits of the case.

Mrs. Scrivener: Mr. Chairman, I disagree with Mr. MacDonald. My interpretation of Mr. Riddell's statement in that regard was that Mr. Riddell was trying to indicate to us that he was acting in his capacity as a member. He was not discussing the merits of the case with us, nor was he arguing whether there was or was not a libel. What he was arguing was his official act in his capacity as an acting member. I took it that way. I did not take it as a discussion on the merit of his statement or otherwise.

Mr. Chairman: Let me try to clarify once again: I am prepared to hear any question related to the member's privilege. If you can relate the question in some way to the matter that is before this committee, then I think it is our duty to hear the question and to hear a response.

I will be the first one in the room to recognize that it is going to be very difficult to answer questions without in some way making reference to other things. It is going to be my unfortunate job to attempt to rule on each occasion when the question is in order and when someone who is answering questions deviates from the matter before the committee. It's a difficult rule. I am prepared to accept appeals to the chair on the matter all the way through.

Mrs. Scrivener: You are not permitting debate whether or not a libel has occurred.

Mr. Chairman: That's not before the committee.

Mrs. Scrivener: Precisely.

Mr. Chairman. The matter of privilege is.

Mrs. Scrivener: We are discussing section 38 of the Legislative Assembly Act.

Mr. MacDonald: Mr. Chairman, did the witness not say that he went in and spoke with the management and he came out and expressed views in the picket line which, certainly in the view of some people, were deemed to be the management point of view?

Mr. Chairman: He did not, and I would ask you to get off that particular line of questioning and back to the matter of privilege.

Mr. Bolan: That's not part of the evidence—

Mr. Chairman: Order. Are there further questions from any member of the committee?

Mrs. Scrivener: Yes, Mr. Chairman, I have a question or two.

Mr. Riddell, in the early part of your statement you made the point, as I have just reiterated, that you were acting in your capacity as a member of the provincial parliament.

Mr. Riddell: Yes.

Mrs. Scrivener: You went to some length to describe the number of duties you were

executing and how you felt you were executing your responsibility to your constituents. Do I understand you correctly?

Mr. Riddell: Yes.

Mrs. Scrivener: To what extent, as a result of this action and all of the papers that have been served upon you, do you feel that you have been intimidated and placed under duress to curb your activities in your constituency and especially as the strike was concerned? As a member, to what extent do you feel that you have been intimidated?

Mr. Riddell: As already indicated, I have had to shirk some of my responsibilities here in the Legislature by discussing this particular case at a time when I was supposed to be meeting with delegations of people coming in over Bill 70, The Occupational Health and Safety Act.

After making a third appearance out at Huron Park, requests were coming into my office from people who wanted me to go out and meet with them. Yesterday a person who lives in Huron Park phoned me and asked me if I could take some kind of action. I simply had to say, "I hesitate to do anything, sir, because of this particular matter." I don't feel that I'm providing the type of service that I should be to my constituents who are requesting it.

Mrs. Scrivener: What you're saying is you are no longer prepared to provide as full and, for you, as responsible a service to your constituents where this type of matter is concerned? Is that what you're saying? Do you feel constrained now?

Mr. Riddell: Yes, I do. I might also say that we have a very important matter coming up in connection with the Ministry of Agriculture and Food estimates, and I should be spending all of my time, including this morning, in getting ready for this matter. I think you know the line of questioning that we've been bringing up in the House. The Minister of Agriculture and Food (Mr. W. Newman) had to come in this morning—he had to find me in this room—to sit down and consult with me. I feel that I'm not going to be able to do just service as the agriculture critic for the Liberal Party because I'm tied up with this type of thing.

Mrs. Scrivener: Have you now constrained your public remarks and your statements as a result of this? Do you now feel inhibited as to your ability to speak out as a member?

Mr. Riddell: Yes, I do, and I haven't been speaking out.

Mrs. Scrivener: I see. To what extent do you feel now that you act as a private member? I have asked other witnesses. I would like your opinion. You are sworn as a private member, and while the Legislature is in session, to what extent do you feel you're a private member? Do you feel that there are times when you act as a private citizen?

Mr. Riddell: I feel that I have a full-time job as a member of the provincial Legislature. As I say, I'm swamped with work here in Toronto. I go home on weekends where I am swamped with constituency calls. I attend functions when I'm here in Toronto. I think anybody can verify that I'm generally in my office at 7:30 a.m. Very seldom do I get away from my office before 10:30 or 10:45 at night. Therefore I feel that all my time is being spent as a member of the Legislature. I feel somewhat sorry in that you might say my family is sacrificed. They very seldom even see me. I just feel that you can't divest yourself as a member and return to being a private citizen. I think when you're a member of the parliament, it's almost a 24-hours-a-day job.

Mrs. Scrivener: Just to take that a little further, when you go home and move about your riding, do I take it then that you still consider that you are a member?

Mr. Riddell: Absolutely.

Mrs. Scrivener: You move about your riding and speak to people and perform functions in your capacity as a member?

Mr. Riddell: Yes.

Mrs. Scrivener: I see. Do I understand then also, that as a result of your work load in the Legislature and your work load in your riding, you consider the service of these papers and legal documents to have provided you with considerable emotional and mental stress?

Mr. Riddell: Yes, they have.

Mr. Grande: To continue that line of questioning, do I take from you then that there's no distinction between your role as a member of this parliament and your role as an individual member of this society?

Mr. Riddell: I think there's practically no distinction. As a member of the parliament I am practically working on a full-time basis in that capacity, even to the functions that I attend on weekends. They're practically all functions which I am attending as a member of parliament.

Mr. Grande: Do I understand that to mean that all your actions, from the time you wake in the morning until the time you go to bed at night, are done as a member of the Legislature?

Mr. Riddell: I feel it is. Even when I go to church on Sunday morning, Mr. Grande, I have people pull me aside after the church

service and say that they hate to bother me on Sunday but they have a little problem that they would like me to look into. When I am faced with constituency work at a time when I would hope that I had some time to myself, I would have to say that I am performing most of my time as a member of the Legislature.

Mr. Grande: I just want to make it clear that in your own mind there is no distinction between serving as a member of this Legislature and a citizen of this province.

Mr. Riddell: When the House is in session, you can rest assured you are serving full time as a member of parliament.

Mr. Grande: I would assume also, given the fact that you did state that you were away for a week, the only time that you can consider yourself as an individual, as a person, is when you are out of this province or out of this country?

Mr. Riddell: There were politics discussed even when I was on my week's holiday.

Mr. Grande: Another question I have is in relation to the number of workers that you spoke to. You said that there were a number of workers you spoke to during their lunch break. You did not specify how many of those workers you spoke to. Do you remember how many of those workers you spoke to at that time?

Mr. Riddell: I would estimate that it was in the neighbourhood of 55 to 65. I did not count them.

Mr. Grande: Let me make it clear. You said that you went down to the plant and you went down to see the workers and also you made your intentions clear that you were going to see management. At that particular time, you say that you sat down with a group of workers and one by one they got up and gave you information about what had taken place.

Mr. Riddell: On my second appearance out there. On my first appearance out there, I talked with some of the workers on the picket line—that was the first place that I stopped. I went to the plant. I went through the security guard, introducing myself as the member of parliament. I talked to the vice-president, Mr. Turner, whom I had never met before. Then I came back out and talked to some of the workers in the plant.

The following day was when the line was reinforced by employees from outside the area. The plant was closed down and my secretary in the constituency office was swamped with phone calls. She has it entitled here "phone calls" and what they had to say. I was asked to go out and meet with the workers. This information was conveyed to me by my secretary. I said that I would endeavour to get out on Friday which would have been the time most convenient for me.

I went out on Friday and met with the workers who were assembled in the lunch room during the noon hour.

Mr. MacDonald: What date was that?

Mr. Riddell: I returned back March 9; March 13 was my first appearance at the plant, so it would be the following Friday. I believe it was March 18.

Mr. MacDonald: Friday, March 17?

Mr. Grande: What I am trying to get at is the number of workers that were in the lunch room when you spoke to them.

Mr. Chairman: When you finish the question, would you please relate how the number of workers who work in the lunch room relates to the matter of privilege?

Mr. Grande: All right, I will do so. It is because Mr. Riddell did get the information supposedly from these particular workers. And hence whatever statements were made were made in relation to these particular workers and what these workers had been saying to him.

[12:45]

Mr. Bolan: That relates to libel, does it not?

Mr. Chairman: I just cannot see the relationship between where he got his information and his matters of privilege. I understand that we covered this ground once before this morning and I'm reluctant to go over it again.

Mr. Grande: All right, Mr. Chairman. I will leave that.

At the time that you did meet with "Ben," who turned out to be Mr. Turner, the vice-president of the plant, I think you said, was that an official visitation? Did Mr. Turner know ahead of time that you were going to talk to him?

Mr. Riddell: He had no idea. As a matter of fact, when I was standing talking to the workers on the picket line, the cars were going through and the one worker I talked to said: "There goes Mr. Turner, the vice-president." That was the first that I knew that there was a person by the name of Turner and the first I knew that he was the vice-president.

Mr. Chairman: Are there any further questions fom the members of this committee? Mr. Kellock.

Mr. Sterling: I have a question if you want me to go before Mr. Kellock.

Mr. Chairman: All right. Fine.

Mr. Sterling: Mr. Riddell, I wanted to ask you a question relating to your feeling intimidated. It hasn't been brought out here at all or anything like that, but were you in any way afraid, either in a real or imaginary way, of physical violence to yourself or your family?

Mr. Riddell: It was a thought that crossed my mind after learning, from talking to management, that their lives had been threatened. This is exactly the wording that was used.

Mr. Chairman: That's a long way from privilege so we'll rule that one out of order as well.

Mr. Riddell: So the thought crossed my mind—

Mr. Chairman: Mr. Riddell, if you don't mind, I think we'd better leave that.

Mr. Sterling, do you have subsequent questions?

Mr. Sterling: Yes, Mr. Chairman.

Mr. Riddell, I have a serious problem in determining how far this committee can go in finding whether or not there was a breach of your privilege. We're really dealing with competing rights here. We're dealing with your rights as a member of this Legislature and just how far those rights might go. On the other hand, we're dealing with members of the public and what their rights are in relation to what I might do or what you might do outside this Legislature.

I was wondering whether or not you might have some comment on how far we should extend these rights?

Mr. Riddell: I know my lawyer intends to make some submission on—

Mr. Chairman: If I can interject here, I don't think it's fair to ask the witness to express an opinion on how far his rights might go. I'd caution you on that.

Mr. Bolan: It's a matter of submission.

Mr. Sterling: Okay, I'll defer until his counsel makes his submission.

Mr. Chairman: Mr. Kellock.

Mr. Kellock: Mr. Riddell, am I clear that the one document that was delivered physically by someone other than postal employees to your office was the first notice of intended action?

Mr. Riddell: Yes.

Mr. Kellock: And all of the other pieces of paper came to you through the post, is that right?

Mr. Riddell: Yes.

Mr. Kellock: Thank you.

Mr. Chairman: Are there any further questions from the committee to the witness?

Mr. Bolan: I just have one question. Have you ever acted for or on behalf of Fleck Manufacturing Company?

Mr. Riddell: I have never. If I may just elaborate on that—

Mr. Chairman: That's out of order as well. Are there any further questions from the committee?

Mr. Sterling: I was wondering, Mr. Chairman, no one has directed themselves—and I wanted to direct this to the counsel as to whether it was relevant—in terms of where these statements were made.

Mr. Chairman: Yes, I think that I will now dismiss the witness. Thank you, Mr. Riddell.

To the committee members I would note that we have engaged counsel for the purpose of giving us direction in terms of legal precedents and the laws of the land. Subsequent to hearing the witnesses, I would anticipate that the committee would want to meet, either publicly or privately, to discuss what is relevant in the situation from a legal point of view. I would remind you that you sit here as members of parliament to discuss our own privileges. It is a little awkward, but that's the job before us.

It is now 12:50. We have a request for two further witnesses to appear before the committee. It is unlikely that we will complete that within a 10-minute period, given our track record to date. I would, therefore, suggest that you may want to lay that over until the next meeting of the committee. Is that agreeable? The two witnesses who will be asked to attend at that time will be Mr. Bullbrook and Mr. MacLean. That will be next Thursday morning.

Mr. MacDonald: What is the purpose of calling them, may I ask?

Mr. Chairman: The purpose of the calling is simply that a member of this committee has asked that they be heard as witnesses.

Mr. MacDonald: Will that be followed by a presentation by both of the counsels in terms of their argument?

Mr. Chairman: That might well be subject to some agreement on their part. It was our agreement that we would allow each counsel the opportunity of making a closing presentation to the committee. Would you care to dispense with the matter of calling them as witnesses and move directly to their summaries?

Mr. Haggerty: I think that's good enough.

Mr. MacDonald: Do you want them to give evidence?

Mr. Chairman: I just would like them to be clear on what their purpose is.

Mr. MacDonald: Mr. MacLean just wants to draw to your attention that he is in court next Thursday and can't be here.

Mr. Chairman: We could set it over to the subsequent Thursday, which would be June 1. Is that agreeable?

We will schedule it then on June 1 when we will ask Mr. Bullbrook and Mr. MacLean to make final submissions to the committee.

Mr. MacDonald: May I get this clear, Mr. Chairman? First, they are being called as witnesses?

Mr. Chairman: I want to clarify this. Mr. Bolan has asked that Mr. Bullbrook be called as a witness. Mrs. Scrivener has asked that Mr. MacLean be called as a witness. That stands, in my view. Subsequent to that, both parties will be allowed to make a final submission.

Mr. Bolan: I don't see how you could call upon counsel for both sides to make final submissions on the very same day that they are giving evidence themselves.

Mr. Chairman: I am quite open on the order of business. We said in the initial session that we would allow each counsel to make a final submission of some sort. If you want it to be on that day, that's fine with me. If you want it on a subsequent date that's also fine with me.

Mr. Bolan: I would suggest a subsequent date. I just can't see us putting it together all on June 1 because, first, they are going to be here in their capacity as witnesses to give evidence. Then that evidence will have to be transcribed. They don't know what questions they are going to be asked by the members. Presumably, the following week would be the best date so that they could have a week to prepare their submissions.

Mr. MacDonald: Is it possible to finish the witnesses now?

Mr. Chairman: If you think you could finish in eight minutes, you would be setting a precedent.

Mr. MacDonald: There is one further witness I would like to have called back, and that is Mr. McNamee.

Mr. Chairman: All right. Will you please indicate to me now if there are any other witnesses you want called? McNamee, I believe his name is.

Mr. MacDonald: Yes. It's in the record.

Mr. Chairman: Are there any other witnesses you want called on June 1? On June 1 we will call three other witnesses. At a point subsequent to that, we will then ask counsel for each side to make a final submission.

Could I bring to the committee's attention some ordinary business? There are two bills from the city of Toronto on the Royal Trust Company and Royal Trust Corporation of Canada. Both of these bills have fulfilled the obligation to publish and need approval.

Agreed to.

Mr. Chairman: For the information of members of the committee, we have had a request from the House leaders to meet with the committee to discuss some matters of mutual concern. Would it be agreeable that we arrange that for next Thursday's session?

Agreed to.

Mr. Chairman: I should report to you that I have attempted to meet with the Premier (Mr. Davis). It was scheduled for this morning but I thought it might be a little awkward. We will attempt to schedule that meeting for a subsequent date.

I discussed briefly with the House leaders the matter of ordering of business during the summer recess. It was agreeable that we can do that, but we have a request that it not be until after September 18 so as to not interfere with other select committees.

Are there any comments on that? No.

Is there any further business from the committee?

The committee adjourned at 12:56 p.m.

SPEAKERS IN THIS ISSUE

Bolan, M. (Nipissing L)
Breaugh, M.; Chairman (Oshawa NDP)
Grande, A. (Oakwood NDP)
Haggerty, R. (Erie L)
MacDonald, D. C. (York South NDP)
Riddell, J. K. (Huron-Middlesex L)
Scrivener, M. (St. David PC)
Sterling, N. W. (Carleton-Grenville PC)

Witnesses:
Johnson, P. J., Researcher, Procedural Affairs Committee
MacLean, L. A., Counsel for Members of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)
Moses, L. J., International Representative, UAW
Piercey, F. M., Member, Local 1620, UAW
Seymour, A. E., International Representative, UAW

Assisting the committee:
Bullbrook, J. A., Counsel for J. K. Riddell, MPP (Huron-Middlesex L)
Kellock, B. H., Counsel for the Committee

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Proceedings against Member for
Huron-Middlesex (Mr. Riddell)

JUN 2

Second Session, 31st Parliament
Thursday, June 1, 1978

Speaker: Honourable John E. Stokes
Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

THURSDAY, JUNE 1, 1978

The committee met at 10:13 a.m.

PROCEEDINGS AGAINST MEMBER FOR HURON-MIDDLESEX (MR. RIDDELL)

(continued)

Mr. Chairman: For the information of the committee this morning, Mr. Bullbrook unfortunately was flying "Great Shakes" and is now at Toronto Airport giving a deposition about why their landing gear doesn't work.

Who else is absent this morning?

Mr. MacDonald: Do you mean he's flying around?

Mr. Chairman: No, I believe they eventually brought that aircraft down but it was a little shaky. They are taking statements from those people unfortunate enough to fly that airline. He will probably be here later in the morning.

Mr. Bolan: As I understand it, the RCMP is involved; so they could be detained for several days.

Mr. Chairman: They ought to ban that airline completely.

Mr. Bolan: I am informed that Mr. Riddell is tied up with the chairman of the liquor control board. He will be here later on this morning.

Mr. Chairman: We have scheduled for this morning three people to be called before the committee as witnesses: Mr. McNamee, Mr. MacLean and Mr. Bullbrook. Is it acceptable that we call them in that order?

Agreed? Then we can proceed.

All three have been witnesses before the committee and I don't think there is a need to administer the oath again.

[10:15]

The committee will call its first witness, Mr. McNamee.

Questions from the committee?

Mr. MacDonald: I have a couple of questions I would like to put.

On March 16, 1978, when this whole exercise began, did you have any knowledge of order in council 131/75, dated January 15, 1975?

Mr. McNamee: No, I didn't. In fact, after that, I went to the Ontario Gazette when I first heard about this. I couldn't even find anything in there.

Mr. Chairman: Could the sound be cranked up a bit?

Mr. McNamee: I didn't know anything about the order in council at that time. When we were first advised that there was an order in council, I went to the Ontario Gazette and I couldn't find anything there either.

Mr. MacDonald: Did you have any knowledge at that time that the Speaker treated Mr. Riddell's office as falling under his control?

Mr. McNamee: No, none whatsoever.

Mr. MacDonald: Those are all my questions, Mr. Chairman.

Mr. Chairman: Mrs. Scrivener, do you have some questions? Are there other members of the committee who have questions?

Thank you, Mr. McNamee.

The next witness to be called this morning is Mr. MacLean: Mr. MacLean has been sworn previously. Questions from the committee?

Mrs. Scrivener: Mr. MacLean, would you please describe to this committee how you became involved in this whole action? Was it you initiating a response to your clients, or were your clients instructing you? What was the exchange? How did you come to the point of engaging in the service of this action?

Mr. MacLean: Mrs. Scrivener, to answer that question, on March 3, 1978, it was brought to my attention by my clients that there had been a captive audience meeting in the Fleck Manufacturing plant and that at that meeting members of the Ontario Provincial Police gathered the employees together with management and proceeded to lecture them on their rights to strike and so on. The particulars of that are set out in the application for consent to prosecute; so I need not elaborate.

At that point in time I was retained to look into the matter and to give consideration to whatever proceedings could be in-

itiated to protect the rights of the union and the employees in the bargaining unit against what the union considered to be unfair labour practices.

The matter then developed throughout that week and I commenced to interview a large number of strikers from the Fleck Manufacturing plant. The information was then provided to me, the information that is set out in the application for consent to prosecute.

Mrs. Scrivener: Prosecute whom, please?

Mr. MacLean: To prosecute Fleck Manufacturing Company, the officers of the Ontario Provincial Police—

Mrs. Scrivener: Mr. Chairman, could we abridge this and come up to the point where we get into the action before us now?

Mr. MacLean: I'm giving you the background. I'm giving you an answer to your question, the best way I can. It's an application against named respondents; an application for consent to prosecute.

It then came to light that during the week following the Friday meeting in the plant, and up until on or about March 16, Mr. Riddell had been making statements to the press accusing the UAW of obtaining its certificate to represent the employees in the bargaining unit by devious means, by intimidation, by deception. This was interpreted by myself and my clients to mean the UAW, in accordance with the accusations made by Mr. Riddell, had obtained its certification as a result of a fraud on the labour relations board. I had to advise my clients that that, in my view, was highly defamatory.

Mrs. Scrivener: You initiated that line of thought, did you?

Mr. MacLean: I advised my client, Mrs. Scrivener, and my client instructed me what to do.

I also advised my client that I believed there was a strong case for violation of section 56 of the Labour Relations Act, because we also had information that Mr. Riddell had been on a picket line and made statements to the pickets to the same effect, statements that are set forth in the application for consent to prosecute.

There were witnesses to this information and it was my opinion that there was a case for a violation of section 56. No conclusion could be reached, and they were of the same view, other than that Mr. Riddell had thrown his lot in with the company, and was interfering with the representation of the UAW.

This was following the events that took place at the two meetings on March 3, two captive audience meetings in the plant. That took effect after that. Before that there had been actions taken by management which were of an anti-union nature and were open to the interpretation that the company was engaged in conduct and a pattern of behaviour which was designed to bust the UAW.

In that connection, on page five of the application for consent to prosecute there is a bulletin referred to, which was signed by the president of the company, Fred Berlet, which among other things, says—

Mrs. Scrivener: Sorry, Mr. Chairman, but—

Mr. MacLean: —this is a non-union organization, and goes on from there.

Mr. Bolan: Mr. Chairman, on a point of order, I think the witness, with the greatest of respect, is straying all over the field. He's entitled to wander a little bit, but I think he's jumped out of the pasture into my field.

Mr. Chairman: Mrs. Scrivener did ask for events leading up to the serving of the notice. I think she's now indicating that she'd like you to tighten that up just a bit. Perhaps I'll allow her to rephrase the question a little more directly.

Mrs. Scrivener: In face of what you've just described to us, I take it that you and your clients reacted very strongly to statements by Mr. Riddell which you considered to be incorrect. Is that correct?

Mr. MacLean: They were not only incorrect, Mrs. Scrivener, but they were designed to inflame a bad situation.

Mrs. Scrivener: I am not discussing whether or not they were inflammatory or anything of that nature. I am just confirming with you that you did react very strongly.

Mr. MacLean: My clients reacted very strongly, and so did I, because I thought it was a gross example of anti-union conduct and that it had all the earmarks of a union-busting intention, and that the member was throwing himself in with the company against the UAW. This was already in the atmosphere. There was already a bad atmosphere and this made it that much more volatile and inflamed the situation that much more. I dare say it probably contributed to the fact that the strike is still on.

Mrs. Scrivener: I'd like to see the political comments kept down, Mr. Chairman. As a result of the reaction of yourself and your clients to the remarks that were made, you then sought a redress through the service of the documents which are in question before us. That's what led up to the service of those documents, is that correct?

Mr. MacLean: Mrs. Scrivener, the documents were served—

Mrs. Scrivener: I'm just asking you a question, Mr. MacLean.

Mr. MacLean: Yes, and I want to answer the question. The documents were served because of the provisions of the Libel and Slander Act. I think I've dealt with this before, but I'm prepared to answer your question again. If an action is going to be commenced, the Libel and Slander Act requires that notice of the complaint of defamatory material be given to a person who might be sued and that person given the opportunity to make a retraction, a correction, an apology, or all three of them.

Mrs. Scrivener: As I recall, you did invite an apology, but according to the documents that I saw, you did not indicate that if an apology was made you would drop the action.

Mr. MacLean: No, we had no instructions in that regard at that time.

Mrs. Scrivener: You simply asked for an apology—

Mr. MacLean: That's right.

Mrs. Scrivener: —as well as giving notice that you intended the suit. Right. You felt very strongly then in terms of Mr. Riddell and his statements and reacted strongly. At the same time, as I understand it, the whole affair was reported in the media. The CBC broadcast a tape of the incident. It was also described in the London Free Press and in the Toronto Globe and Mail. The media were involved with circulating Mr. Riddell's statements. Could you explain to me why Mr. Riddell was served and representatives of the media were not served?

Mr. MacLean: Mr. Bolan asked me that question. He asked Mr. White that question. The answer that I gave then and the answer I give now is that Mr. Riddell was the one who was making the statements. The press was merely repeating them. We were concerned with the source of the defamatory material, with Mr. Riddell. He was the one who was also on the picket line talking to the pickets, and, on our information, threatening them. He was the one whom we were concerned with. We weren't concerned with the press. We didn't accuse the press of being involved in the situation, although, as you point out, an action could have been brought against the press.

Mrs. Scrivener: It could have been.

Mr. MacLean: We weren't concerned with the press because our client wasn't concerned. In a strike situation, of course, it can be expected that all kinds of things will appear in the press. We have no quarrel with the press. My clients were concerned with putting a stop to the interference that was coming from Mr. Riddell; they were primarily concerned with putting a stop to that. If it had continued, no doubt we would have considered applying for an injunction, because we had a very inflammatory situation, a very bad situation, at that time.

The contribution made by Mr. Riddell just further inflamed it. He was denigrating the union. He was further adding to the state of confusion among the employees. He was making these statements when people knew that he was a member of Parliament. Because of that, they got that much more dissemination and that much more credibility. He would be regarded, of course, as a man of responsibility. That made it that much worse.

Mr. Chairman: Could I just mention that the questions and answers, in my view, are straying rather widely?

[10:30]

Mrs. Scrivener: They've actually come full circle, Mr. Chairman.

Mr. Chairman: Yes. It was a long way around.

Mrs. Scrivener: Yes. It took a long way trying to get that.

Mr. MacLean: I was trying to answer your question, with respect, Mrs. Scrivener. I don't know how else I could have answered it. I try to do my best.

Mrs. Scrivener: I would just ask the Hansard clerk to read back your last sentence or two.

Hansard reporter: I'm sorry, I can't do that.

Mrs. Scrivener: You can't? Can you play it back?

Hansard reporter: No.

Mrs. Scrivener: Mr. MacLean has just told us that neither he nor his client had any quarrel with the press, although he has admitted that the press did disseminate quite widely Mr. Riddell's statements. He wanted to put a stop to statements by Mr. Riddell. Mr. Riddell's statements were gaining attention because of Mr. Riddell's position and prestige. This comes full circle to my line of questioning at earlier meetings in terms of Mr. Riddell's position as a private citizen and Mr. Riddell's position as a member. In other words, it was the member whom Mr. MacLean and his clients wanted to silence.

Mr. MacLean: I disagree with that, Mrs. Scrivener, if I may interject. That's not my evidence.

Mr. Chairman: Could I interject at this point to remind the committee that we're not arguing the merits or demerits of anybody's testimony at this time, but eliciting comments, opinions and facts from witnesses before the committee?

Mrs. Scrivener: I would put a further question to Mr. MacLean. When you were advising your clients as to the extent of your service of notice of actions and so on, did it not occur to you that there could be placed upon your action—and you must have known that your action would receive public attention because there aren't that many suits of that nature which are ever launched—an interpretation of discrimination against a member in terms of the fact that he was not dealt with in the same manner as other persons who also, it would appear, through their actions offended the union? I refer, of course, to the media.

If Mr. Riddell offended the union, then obviously the media must have too, since it disseminated his words. Yet you chose not to make a service upon the media, only upon the member. I'm wondering if you did not consider this and so advise your clients.

Mr. MacLean: My clients were concerned with the anti-union aspects of the matter, both for purposes of the application for consent to prosecute and otherwise. The person who was committing, as my clients allege, the unfair labour practices, together with the other persons named in the application for consent to prosecute, was Jack Riddell. I didn't think, nor did my clients,—I don't suppose we gave any thought to it—we were discriminating, but we certainly weren't concerned with the press. We were concerned with matters that constitute anti-union conduct. That is another reason why the notice of intent to bring the action was brought against Mr. Riddell.

We weren't concerned with the press. They weren't committing unfair labour practices. I don't think there was any discrimination. We went at the person who was responsible. I deny there was any discrimination, any discriminatory motive or any discriminating intention in selecting Mr. Riddell. He was the person who was involved in the dissemination of the statements which were not contributing to the solution of the situation. Quite the reverse; he was undermining the situation from where we sat.

Mrs. Scrivener: Mr. MacLean, you said in your own words that you wanted to put a stop to the statements by Mr. Riddell. You referred to the fact that you were worried about matters concerned with anti-union conduct. Surely you would have then been concerned about the dissemination by the press of statements by Mr. Riddell, which also would constitute an anti-union conduct. Surely if you wanted to put a stop to the statements by Mr. Riddell, you would have also served the press in order to inhibit them in their dissemination of such information.

Mr. MacLean: That is not so, Mrs. Scrivener, with all respect.

Mrs. Scrivener: Why is it not so?

Mr. MacLean: I think I have answered the questions, Mrs. Scrivener. I can't do any better than what I have already done.

Mr. Chairman: Mr. MacDonald.

Mr. MacDonald: May I just have one or two supplementary questions on this issue that Mrs. Scrivener has been raising?

When was this union certified?

Mr. MacLean: On October 20, last year.

Mr. MacDonald: Was it following a vote of the members?

Mr. MacLean: The union was certified outright following a hearing on that date, on October 20.

Mr. MacDonald: In other words, the board deemed the signed cards of prospective members of the union to be in good order to the point they certified it without a vote.

Mr. MacLean: There were 117 out of 132.

Mr. Bolan: Mr. Chairman, on a point of order: Surely the question which is posed by Mr. MacDonald is clearly out of line. It has absolutely nothing to do with the purpose of this particular hearing, nothing at all.

Mr. MacDonald: Mr. Chairman, on the point of order: This committee is asked to consider whether or not the action by Mr. MacLean's company is a breach of a member's privileges. Therefore, it seems to me that one has a legitimacy in examining whether nor not Mr. Riddell was in effect challenging a legally established union, certified by the Ontario Labour Relations Board.

Mr. Bolan: Absolute nonsense, that doesn't make sense.

Mr. MacDonald: What do you mean? Mr. Chairman, may I put this question to you: Do you as a member of this Legislature have the right to go out with immunity and engage in civil disobedience?

Mrs. Scrivener: That is not our purpose.

Mr. Bolan: That is not the purpose of this particular meeting.

Mr. Chairman: The point of order that has been raised by the speaker has been recognized by the chair. Are there further arguments on this point?

Mr. MacDonald: Yes, I have a further argument. It seems to me that it is a very relevant point if we are considering whether or not the rights or privileges of a member have been breached. Surely it is highly legitimate to consider, without getting into the merits of the case, that he was engaged in civil disobedience in challenging a union that was legally established by the Ontario Labour Relations Board—indeed, established without a vote because the board was persuaded and established without the Fleck company challenging it, so the member was in effect going beyond the management in terms of challenging the union. Do you mean to say that we cannot consider the fact that he was engaged in civil disobedience and defiance of a legally established union and that he has immunity to go out and do that?

Mrs. Scrivener: You are making a speech.

Mr. MacDonald: I am making a speech, Mrs. Scrivener.

Mr. Chairman: I am asking people to speak to the point of order.

Mr. J. A. Taylor: Mr. Chairman, surely if we are to decide whether a member's privilege has been breached, we must have an appreciation of what that privilege is.

Mr. Chairman: Right.

Mr. J. A. Taylor: Frankly, I don't think that that has been defined. My own view is that a member of this Legislature is not a super-citizen. He is not litigation-proof because he happens to be a member of the Legislative Assembly of this province, nor is he immune from prosecution. There are certain privileges that he does have within the legislative chamber itself. In my view again, one is freedom of speech, which will not render him liable for slander for what he says in the House. But surely, once a member ventures outside the chamber, he is like any other citizen.

Possibly counsel can guide the committee in terms of the issue that we must decide, because from what I have seen of these proceedings we are wandering much too far. I would like to keep the issue to whether or not a member's privilege was breached because of the service of certain documents on that member while the House was in session and not making judgements as to what was said outside of the House and what privileges a member may feel he has outside of the House.

Maybe counsel can assist us there but, frankly, I don't see that a member has any privileges in terms of being immune from a suit or prosecution outside of the House, except insofar as it flows from statements that he made inside the legislative chamber.

Mr. Chairman: Are there further speakers to the point of order?

Mr. Bolan: Yes, if I may speak to the point of order.

Two weeks ago we did discuss what our terms of reference were. It was decided at that time that our terms of reference were not just to question whether or not the service of the documents amounts to a breach of privilege; rather, the whole question of section 38 came up, and it is specifically referred to in the ruling made by the Speaker as well as in the motion which was put to the House.

Ultimately what we are going to have to deal with is not just the question of whether or not service of documents on that member in the jurisdiction of the House amounts to a breach of privilege, but we are going to have to approach the broader question and determine whether or not this particular action, this particular application in the manner in which it was done, amounts to a breach of the member's privilege.

Then you are going to get into the very fine definition of the word "molestation" and what it means and whether or not the manner in which this particular action was commenced, and the manner in which the application to prosecute was brought about, did amount to a molestation of the member's privileges. I think we have to address that.

Speaking again to the point of order which I raised, again I think we have to confine ourselves to just what took place with respect to the service of the documents, the conduct of the firm retained by UAW, the conduct of the intended plaintiffs and instructions which they gave to Mr. MacLean, and the advice which Mr. MacLean gave them. I don't think it entitles us to wander all over the place to determine just what the member had the right to do. It is not for us to determine that. It could very well be for a court of law to determine whether or not what he did amounted to a libel or a slander, or whatever the case may be, or whether or not his actions, allegedly under section 56 of the Labour Relations Act amounted to an offence. I think what Mr. MacDonald is trying to find out from Mr. MacLean, or whatever other witnesses are available, is whether or not the actions of Mr. Riddell at that particular time

at the plant gave him some particular privilege. We are not here to inquire about that. [10:45]

Mr. J. A. Taylor: A member of this Legislature should be accountable for his actions like any other citizen in this province.

Mr. Chairman: All right.

Mr. Bolan: Not in this committee.

Mr. Chairman: Order.

Mr. Bolan: Not in this committee.

Mr. Chairman: Might I intervene—

Mr. Bolan: He is not on trial, Jim.

Mr. Chairman: —and give for your consideration the following:

Without arguing the specifics of the matter that has been laid before the committee which you are all dying to get into, I simply want to point out that we have had to give some latitude and part of our difficulty is in the motion that referred this matter to the committee. I will read it for you once again: "... the matter of the service of documents pursuant to the Libel and Slander Act and the Labour Relations Act on the member for Huron-Middlesex, contrary to section 38 of the Legislative Assembly Act ..." and on and on.

I want to point out that in section 38 of that act where it deals with the matter of privilege it is specific. It says:

"Except for a contravention of this act a member of the assembly is not liable to arrest, detention, or molestation for any cause or matter whatever of a civil nature."

When we get to the point when we have finished with the witnesses this committee will have to face all of those problems. Was the matter a civil nature? Was it in contravention to section 38? We must ask here—according to the direction given us by the House—questions which relate to the service of documents under the Libel and Slander Act and the Labour Relations Act and is in the motion.

I'm asking you to be more direct in your questioning. I am asking you to try to stay away from arguing the case itself until we have heard the witnesses. I think we will have to do that. We have to give some latitude because of the broad spectrum that is there. We will argue the matter of privilege I hope at some length, but this is not the time to argue that. This is the time to ask questions of witnesses.

I am prepared to give you some latitude. I am not prepared to let you wander all over the place. But it is difficult, not having seen the questions beforehand and not being able to know what the answer will be until I have heard it, to rule things out of order. I am just going to ask you to focus your questions a little bit more and not argue the case.

Mr. J. A. Taylor: Mr. Chairman, addressing the point you make. The reference to us, as I understand it, is in regard to the service of documents and mention is made of section 38. You are interpreting the reference to section 38 as "broadening", in a very generous way, our mandate. I question that very seriously. We are getting into the facts surrounding and leading up to what some parties allege is an improper course of action or conduct, which vests in certain parties a right of action where we are getting into areas that, in my humble submission, are outside the bounds of our mandate. This troubles me very much, because those are matters that should be adjudicated upon by a court of law, not by this committee.

Mr. Chairman: I want to point out to you you should not underestimate the committee. The committee sits in this function principally as a court of law and when we recommend to the House, the House itself will function as the highest court, from which there is no appeal.

So I am offering latitude, as we have consistently throughout the hearings. I am asking you to attempt to focus the questions and not to debate the issue of privilege at this time. My concern, frankly, is that we have not in this House had a major issue of privilege raised in this manner before, and it is important that we hear the privilege. We allowed the member for Huron-Middlesex at the last session to state his privilege at some length because I feel it involves all of the question of privilege.

I am asking the members of the committee now to focus your attention on what you think is properly before the committee and to elicit answers but not to cause debate at this point in time. The debate properly rests with the committee as to what constitutes privilege and what doesn't, and we will do that when we have finished calling witnesses. Let's not entertain that argument at this point in time.

Mr. Sterling: Mr. Chairman, the only thing that I would ask is whether it could be limited to questioning that is going to elicit factual information. My only concern here is that we're going to give both counsel an opportunity to summarize their cases, and I presume at some length. I would hope that they would go through the history of the whole matter at that point in time, and I'm

quite willing to listen to it at that time, but I don't want to hear it twice over again.

Mr. Chairman: Is that fair?

Mr. MacDonald: I have a question I'd like to put to our counsel, not for a reply at this point but for a reply at an appropriate time.

I would like to be clear in my mind whether counsel considers that the privileges of a member have been breached when that member was challenging a legally established union, as certified by the Ontario Labour Relations Board, or any other law of the province, including the Libel and Slander Act.

In other words, picking up on Mr. Taylor's comment that a member is not a super-citizen, is it correct that a member is not a super-citizen and therefore he does not have privilege to challenge legally established unions and to violate the Libel and Slander Act?

Mr. Chairman: I think the points just mentioned by Mr. MacDonald and referred to earlier by Mr. Taylor are matters that the committee will have to consider when we get to the point when we debate the thing.

Mr. MacDonald: I agree.

Mr. Chairman: We will be asking our counsel to provide us with his legal interpretation of what constitutes a member's privilege. I would assume that our own counsel will provide us with his interpretation of that and report to the committee at some length on that matter. Then it will be the committee's task to debate the matter and report back to the House. If we're clear on that, perhaps we could proceed. And I would ask Mr. MacDonald to rephrase his question.

Mr. Haggerty: Mr. Chairman, I have a question or two of Mr. MacLean.

Mr. MacDonald: So have I, and I had the floor. Mr. Chairman, on page 65 of the transcript of our meeting on June 1, Mr. Riddell testified that after each visit to the Fleck plant he was served with another notice of action and that, if he was going to be served with something every time he went out, he wouldn't bother to go. Would you comment on that? I'm puzzled by that observation.

Mr. Bolan: Mr. Chairman, if I may, on a point of order: Mr. Riddell testified that he was served with other documents, including notices under the Labour Relations Act. These were notices by way of telegrams sent to him, and presumably this is what he was referring to.

Mr. Chairman: I think that the question more specifically was—

Mr. MacDonald: My query to Mr. MacLean was whether he could comment on these, some of which came from Mr. MacLean.

Mr. Chairman: I don't want to restrict the questioning. We don't particularly want comments from Mr. MacLean, but I imagine what you're asking more specifically is, did Mr. MacLean serve further notices.

Mr. MacDonald: Correct.

Mr. Chairman: That certainly is in order.

Mr. Bolan: Yes, I realize that. But, to be fair, I think that Mr. MacDonald just can't phrase the question in such broad general terms; he should refer to specific dates.

Mr. MacDonald: I'm asking Mr. MacLean to indicate the dates and to comment on the further notices that were given.

On the point of order, Mr. Chairman: I didn't once interrupt Mr. Bolan when he had a lengthy questioning of Mr. Riddell.

Mr. Bolan: You were entitled to.

Mr. MacDonald: I was entitled to, but I didn't.

Mr. Bolan: That's your problem, not mine.

Mr. MacDonald: No, it's not my problem. All I'm saying—

Mr. Bolan: Don't raise with me a privilege which I think I have.

Mr. Chairman: Order.

Mr. MacDonald: Mr. Chairman, if these issues were discussed in testimony solicited by Mr. Bolan, I submit that we have full legitimacy in getting the full story from Mr. MacLean, because Mr. MacLean has the other side of the story.

Mr. Chairman: Mr. MacDonald had asked a question of the witness. The question is in order. The witness will now answer.

Mr. MacLean: In answering that question, I understood Mr. Riddell to say that he received notices of action complaining of statements that he had made every time that he appeared at Fleck Manufacturing plant. The notices of intent to bring the action, of course, dealt with statements he had made to the press and to the CBC, to the radio media, and didn't involve his attendances at the Fleck plant.

He seems to have left the impression, as I interpreted him when he gave evidence, that every time he was there he then got something afterwards, sort of deliberately from my clients or my office. The information that we had was that he was there—and this is alleged in the material—he was at the Fleck plant on or about March 13, the Monday, and he was there again on March 20. Certainly by March 20 he, as I understand it, had

received the documentation, the documentation surely initiating the proceedings; and whatever other documentation was given to him was with respect to matters that had occurred up to that time.

As I say, I'm unable to understand how he can say that every time he was there he got served with something, because he'd been served with everything. The last time he was there, according to my information, was March 20.

I might say also that the labour relations board has a very detailed procedure of serving all interested parties with all material, and they would have sent him or his solicitor the copies of the replies of the other respondents, copies of all correspondence whether they pertained to him or not. He'd get all of that, if that's what he's referring to.

I can't understand how he says he was served with something every time he was there, because in terms of the proceedings he had been served with everything by the last time he was there. He did refer to the notice of action, in my understanding of what he said. Certainly the notice of action didn't deal with that at all. It dealt with statements he'd made in other places.

Mrs. Scrivener: Just to clarify this particular point, when Mr. Riddell was reading out the long list of papers and documents he had received, I was making quick notes. I ultimately ran off the page, there were so many. He was receiving papers and documents long after March 20, according to the record and testimony he gave us.

Mr. Chairman: I think the point that Mr. MacLean makes is that in relationship to the service of documents from his office, representing his clients, they were served previously. Mr. Riddell tabled before the committee a list of other papers, documents, letters and notices that were given to him by various groups. I think the committee is clear on that.

Mr. Bolan: What do you mean when you say "previously"? Previous to what date?

Mr. Chairman: You could ask Mr. MacLean. I believe—

Mr. Bolan: No, I'll ask him on general questions, but you're the one who is interpreting his evidence by saying that what Mr. MacLean means to say, or words to that effect, is that he was referring to previous documents. Previous to what? Previous to March 20 or previous to what date? I don't know.

Mr. Chairman: It was my understanding that Mr. MacLean was simply indicating that the documents that were served after— you'll have to excuse me while I find the date on the first notice—after March 20, such documents, notices, copies of letters or what not, were not served by him. Is that correct?

Mr. MacLean: There were documents that were sent after that date in connection with the notice of action. The point I was making was that the last time Mr. Riddell was at the Fleck scene, as far as we knew, was March 20; and anything he received was in connection with what had happened up to that time.

We weren't waiting for him to get there and then serving him with something after he'd been there. As far as we knew, he'd only been there twice. But the impression that I had from his evidence was that he was there on innumerable occasions and each time he was there he got served with something.

He's trying to leave the impression that we were sort of following him around, waiting until he got there and then serving him with something. That's not the case at all.

[11:00]

The documentation in connection with the notice of action all related to the original statements that he had made, the original publications that he had made. They weren't concerned with whether he made them at the plant or somewhere else. I just want to correct that impression.

Mr. MacDonald: Could I ask another question, Mr. Chairman? Again on pages 55 and 56 of the testimony for June 1—

Mr. Chairman: Today is June 1. It must be some other day.

Mr. MacDonald: I am sorry. It must have been May 18. There's an error further back in the transcript for anybody who is reading this carefully. Mr. Riddell also testified that he talked to workers in the plant on Friday, March 17. He indicated he was told by them of something that they considered to be unsatisfactory about the way in which the union got established. He added that this was confirmation of what he had learned even before the strike began.

My question to you, Mr. MacLean, is do you have any knowledge of Mr. Riddell's ever asking the union for its comments on what the non-strikers said in this connection?

Mr. MacLean: Certainly not, Mr. MacDonald. The question was never asked any members of the union that I am aware of. The names of the members of the union who are officials were very prominent in the news articles. No question was ever asked and no

information was ever sought. Certainly if Mr. Riddell had directed that inquiry to the union, it would have been well received and all the information would have been given to him, but he did not.

Mr. MacDonald: Related directly to that then, did the company take any objection to the union's evidence of membership presented to the hearing for certification before the Ontario Labour Relations Board?

Mr. MacLean: No, Mr. MacDonald. They did not.

Mr. Chairman: Order. I am going to have to intervene at that point. I cannot see the connection between that question and the matter of the member's privilege. I am going to have to rule that that particular question is going to have to be rephrased or ruled out of order. If it is ruled out of order, we don't require an answer from the witness.

Mr. MacLean: It's really the previous question I wanted to elaborate on if I could.

Mr. Chairman: Do you choose to rephrase the question?

Mr. MacDonald: Mr. Chairman, I am back to the point I made earlier that surely it is legitimate for this committee to take into consideration the fact that this union was legally certified without any challenge by the company. Is it within the privileges of a member to go out and to challenge a legally certified union and to do it with total immunity?

Mr. Chairman: I am simply going to rule that that might be quite acceptable for the—

Mr. MacDonald: I am seeking evidence that would lead me to justify that conclusion and I submit that conclusion is very relevant to our considerations. All I want to do is to get on to the record the facts with regard to the certification of that union and my understanding that the company did not challenge the certification of the union. In other words, they accepted the legality and the non-deceit of all the signing of cards.

Mr. Chairman: I am going to have to rule. I quite appreciate the fact that there are other considerations to be had here, but I cannot see the relevance of that particular question related to the member's privilege. If you can rephrase it to get it into that regard, that's fine by me. I appreciate the problems that everyone is having with this. I don't deny the validity of your concern, but I am asking you to rephrase it.

Mr. MacDonald: I shall leave that question, Mr. Chairman, because with respect I think it is very pertinent to our considerations in this committee. We will get back to it in argument if we can't get any further questioning here.

Mr. Chairman: That's acceptable.

Mr. MacLean: Mr. Chairman, if I may, the evidence given by Mr. Riddell was in part to the effect that he was out at the Fleck plant gathering information. The point I wanted to make was that the information was gathered from only one side. If he had come to the union and asked the union for information, he would have received information from the union very readily. The union would have said that it had been certified without challenge by the Ontario Labour Relations Board on evidence of membership which was in excess of 80 per cent of the employees in the bargaining unit.

The information would also have demonstrated that the company before March 3 had been engaged in anti-union conduct in the plant with a view to dividing the employees and creating conflicts among the employees. I don't want to get into details in the application for consent to prosecute. Information would have been supplied about the bad wages.

Mrs. Scrivener: I question the relevance of this.

Mr. Chairman: I am going to intervene at this point. I want to say again I appreciate the problem that everyone is having, but we have to draw a line somewhere. It strikes me that they will be arbitrary lines, that's true, and when the committee goes to the stage of the proceedings where we debate whether or not the member's privileges have been breached, we will allow great latitude. I am urging you in the course of hearing witnesses to attempt to keep both the questions to the witness and the response from the witness to the point of whether or not the member's privilege has been breached. There are other considerations to be sure, but please let us try to keep within those confines.

Mr. MacDonald: Surely when you permitted Mr. Riddell to put on the record a great deal of information, some of which is inaccurate, some of which is incomplete, it is not only the right, it is the responsibility, of this committee to get further evidence to keep that in balance.

Mr. Chairman: Well, Mr. MacDonald, I am going to ask you—

Mrs. Scrivener: May I speak to that point?

Mr. Chairman: Excuse me for one moment please. I am going to ask you to withdraw one portion of your remark. I would remind you that we have called members before this

committee to give testimony. You may disagree with their opinions. You may disagree with what they say or what they have done. I do not think because we have asked them to testify under oath that you have the right to suggest that someone provided us with inaccurate information. I would like you to withdraw that particular comment.

Mr. MacDonald: I don't see how I can withdraw it because what I am trying to do now, hopefully with your permission, is to get from Mr. McLean evidence which will indicate that it is in conflict with what Mr. Riddell has put on the record.

Mr. Bolan: Say so. Don't say it's untrue.

Mr. Chairman: That's fine.

Mr. Bolan: You are calling him a liar under oath.

Mr. Chairman: You can certainly suggest that information was not as accurate as you would care to have it. You can certainly disagree with the things that were presented.

Mr. MacDonald: Let's not get into semantics.

Mr. Chairman: All right, that's fine.

Mrs. Scrivener: At our last discussion, the point was well made that Mr. Riddell was trying to give us a description of his conduct as a member and that was a great part of the point that he was making—his conduct, attitude and approach as a member and the extent to which he felt his conduct had been molested or intimidated or his privilege breached. Now, I don't think how he conducted himself is before us. I don't think his decisions or his investigations as a member are an issue before us. I think that what we are dealing with is section 38. Where we are leading to it is not for us to judge in the sense that Mr. MacDonald is raising at this time.

Mr. Chairman: I would have to put it this way. In the course of his testimony before this committee I allowed Mr. Riddell to state as completely as he wanted to whatever he thought might constitute a breach of his privilege as a member. After all, that is the purpose of this committee. There was absolutely no way that we could shut down, thwart, limit, whatever he chose to say.

Now I would disagree with what you have just said. The conduct of the member is in question. Privilege does not apply universally. No one has ever made that argument since the 1770s in Britain. So specifically conduct does come into question. Specifically, the matter of where a member's privilege applies comes into question. That is clear in the Legislative Assembly Act, in Erskine May and everything you would care to read about that.

Mrs. Scrivener: Sorry, may I interject? When I said conduct, I had in mind Mr. MacDonald's most recent remark about whether or not Mr. Riddell had spoken to management and spoken to the unions and so forth.

Mr. Chairman: That aspect of it doesn't fall clearly within the committee's purview. Portions of it may. But if we are confining ourselves to the argument about where a member said things or how he acted, yes, that part of the conduct is clearly within the purview of the committee; and I would remind you again that that matter that's quoted in section 38 stipulating that you can invoke privilege on matters of a civil nature clearly is also within the confines of the committee's questioning. I wonder if we could now proceed.

Mr. J. A. Taylor: If I could just comment, it may or may not be of help. I am afraid that we are confusing opinion evidence and argument with fact. When we permit opinion evidence to flow freely as it has, there is bound to be contradiction when we hear from the different witnesses. I would suggest that if we could keep as factual as possible, it might be helpful and eliminate that type of conflict.

Mr. Chairman: I would agree.

Mr. MacDonald: That's fair enough. We come back to the question I was attempting to raise with regard to Mr. Riddell's conduct while he was visiting the plant and the purpose of his visiting the plant. He said he went out to get as much information as he could and that he hoped to render assistance in bringing a settlement in the strike. My question to Mr. MacLean is: to your knowledge did he ever communicate that position to your clients?

Mr. MacLean: Certainly not, Mr. MacDonald.

Mr. Bolan: On a point of order, if Mr. MacDonald is seeking to obtain that particular kind of evidence, then Mr. MacLean, unless he was there, is not able to give that evidence. It is hearsay evidence; whatever information he has is hearsay evidence. If Mr. MacDonald is interested in finding out just what the member did when he went there, he is free to call whatever witnesses are available to give that information. But I say that it's wrong for him to ask this witness what information he has as to what took place there at that time.

The information you have was from Riddell himself. If you want to call somebody else

who may contradict what Riddell says, or call Riddell back, then call that person, but this witness can only give you the information or the evidence that somebody else told him or what he may have heard. There is no way of testing its reliability or its credibility and as such it is not fair.

Mr. Chairman: Or, of course, he could as representative for the United Automobile Workers testify as to what role he personally played in that. I agree he certainly couldn't give evidence before the committee as to what happened with anybody who might have worked at the Fleck plant. If the question is was Mr. MacLean personally contacted as the legal representative, that certainly is in order.

Mr. MacDonald: Was Mr. MacLean contacted, or as far as he is aware was any member of the union contacted? That's factual information which Mr. Taylor insists we should be getting, and I agree with him, and I think it's legitimate.

Mr. Haggerty: Point of order: I think that question is beyond reason. I think Mr. Riddell, as any member, has been called into an issue or a troubled area in our society. The question was raised in the Ontario Legislature to the Minister of Labour (B. Stephenson). That's where he was seeking further assistance in settling the strike issue at Fleck. I don't think the question here—

Mr. MacDonald: The Minister of Labour could give only second-hand information.

Mr. Haggerty: No. The Minister of Labour has knowledgeable persons in that area who should have the evidence there. There is no doubt they were in closer contact than even some of the unions, or even myself or any member of the Ontario Legislature. I suggest that Mr. Riddell did follow proper procedure in raising the matter in the Ontario Legislature. It relates back to the question I was going to ask Mr. MacLean. Is he aware of any other MPP's involvement on the picket line at Fleck industries?

Mr. Chairman: That's irrelevant.

Mr. Haggerty: No, it isn't.

Mr. Chairman: It is clearly outside the bounds, by anybody's stretch of the imagination, of what this committee is about. Mr. MacDonald has asked the question of Mr. MacLean whether he was personally contacted in this regard, and Mr. MacLean has previously answered, and I would allow him to clarify again.

Mr. MacDonald: If I may clarify my question, was he personally aware? And since he is the counsel for these clients and therefore thoroughly familiar with all of the information upon which they acted, is he aware of any other member of the union who was approached by Mr. Riddell to get the union's side of the picture in order to facilitate a settlement?

Mr. MacLean: I am not, Mr. Chairman. In fact, there was an attempt made by certain members of the union to meet with Mr. Riddell. At that time, it was Mr. Seymour who was under a prohibition from the Exeter area. A telephone call was made to Mr. Riddell with a view to seeing if he would meet with the people at lunch and he wouldn't—

Mr. Chairman: I have to stop you there. The question was very direct and you did answer the question. Do you have further questions?

Mr. MacDonald: Yes, I have. Mr. MacLean, in his testimony Mr. Riddell said he was asked by reporters to elaborate on the line of questioning he had posed in the House. He then said that he reiterated what he had been told by some workers as to the means by which the union was certified.

[11:15]

Were you or your clients aware of any statements made by Jack Riddell, that his views concerning the UAW and the way he claims it obtained its bargaining rights, as expressed on radio and in the press, were elaborations of a line of questioning that he had put in the House?

Mr. MacLean: Certainly not, Mr. MacDonald. And anything that had been said in the House, as I have read Hansard, would indicate that the subject was never raised in the House concerning the challenge to the union's status as a bargaining agent and the way it had obtained its certification.

I note that Mr. Kerr on March 13 did apologize to the House for some statement he had made that he thought the union represented only half of the workers. The statements made by Mr. Riddell were made later. We certainly were not aware that the statements he made outside were in any way an elaboration of any line of questioning which had taken place in the House.

Mr. Chairman: I am becoming most uncomfortable with the line of questioning and most uncomfortable with the responses that are coming. It strikes me you are well into argument and well away from fact. Do you have any further questions?

Mr. MacDonald: Yes, I have, Mr. Chairman, but I was puzzled by your comment. However, I will move on to another question.

Did you or your clients ever consider or intend, as a purpose of the notice of intended action or application for consent to prosecute, to question or challenge anything said or brought up by Mr. Riddell before the assembly?

Mr. MacLean: Certainly not, Mr. MacDonald.

Mr. MacDonald: Did you or your clients ever intend as a purpose of the document to inhibit or interfere with Mr. Riddell in the performance of his duty as a member of the committee on Bill 70, The Occupational Health and Safety Act, or as a member of the resources development committee?

Mr. MacLean: Certainly not. We didn't know he was on those committees.

Mr. MacDonald: Well, did you or your clients by the documents intend to interfere with any inquiry which Mr. Riddell might make into any of the facts of or concerning the strike or its causes or its possible settlement?

Mr. MacLean: If that had been his intention, surely not.

Mr. MacDonald: May I just put to you a couple of questions that I put to John McNamee a few moments ago. On March 16, 1978, when the initial action was taken, did you have any knowledge of the order in council 131/75 dated January 15, 1975?

Mr. MacLean: No, I did not.

Mr. MacDonald: Did you have any knowledge at that time that the Speaker treated Mr. Riddell's office as falling under his control?

Mr. MacLean: No, I did not.

Mr. Haggerty: Are you aware of other MPPs' involvement on the picket line at Fleck Manufacturing?

Mr. MacLean: After the situation. I am aware from the press that Michael Cassidy was at the Fleck plant, I believe assisting on the picket line.

Mr. Haggerty: Was this invited? Was there any invitation that you are aware of?

Mr. MacLean: I am not aware of how he got there, sir.

Mr. Haggerty: Are there any other members of the Ontario Legislature who have been involved on the picket line? Other than Mr. Cassidy and Mr. Riddell?

Mr. MacLean: I am personally not aware.

Mr. Haggerty: Why would Mr. Cassidy be there?

Mr. Chairman: I am going to rule that question out of order. It is a little too far beyond the pale. Do you have other questions, Mr. Haggerty?

Mr. Haggerty: I think it is a good question. The reason I asked this question is that when there has been an impasse I have gone to strikes in my area to which all elected officials, even from city council, as well as MPPs have been invited—even the federal MPs—to sit down with both management and union to try to bring about a peaceful settlement.

Mr. Chairman: That's all true. Any further questions to Mr. MacLean?

Mr. MacDonald: In the interest of accuracy, because Mr. MacLean may not have been aware of it, there were certainly other MPPs who were down there at the time about 250 women from Toronto went down to the strike. I have forgotten the exact date.

Mr. Chairman: I don't believe it's been Mr. MacLean's expertise to keep a head count of who was and who wasn't there. [Interruption in recording]

Mr. Bolan: . . . Was it on March 16 or 17?

Mr. MacLean: I believe it was on or about that date, Mr. Bolan, yes. It was left at Mr. Riddell's office.

Mr. Bolan: Incidentally, has the writ been issued yet in the libel and slander action?

Mr. MacLean: I'm afraid not, Mr. Bolan. I want to raise that with the committee to ask their advice because we're getting close to the termination of the limitation period.

Mr. Bolan: Is it 90 days?

Mr. MacLean: It's three months. I'm glad you raised that because—perhaps I'm speaking now as counsel—we would appreciate the advice of the committee on that question having regard to the fact that if the action is not commenced, and a writ issued, it will then be statute barred. That is the difficulty.

We, of course, have hesitated because this committee is undertaking this inquiry and we certainly don't want to show any disrespect to the committee. But we would appreciate the advice of the committee if, at some time, we could have it.

Mr. Bolan: I take it then that one of the reasons for not issuing the writ is, you are concerned that there may be a breach of the member's privileges under section 38 and, also, that the matter is before this committee.

Mr. MacLean: Mr. Bolan, we are of the opinion that there would not be a breach by the issuance of a writ of summons and a commencement of an action. But this matter is under investigation by this committee and we are concerned with not showing any

disrespect to this committee. We would like your advice.

Mr. Bolan: I see. Following the service of the—

Mr. J. A. Taylor: Mr. Chairman, pardon me.

Mr. Bolan: I'm sorry. Go ahead.

Mr. J. A. Taylor: On that point, I gather that what is asked of this committee is whether or not the committee would interpret the issuance of the writ as an act of discourtesy because, surely, Mr. MacLean must decide whether or not he has a legal right to issue that writ. Is that a fair comment?

Mr. MacLean: That's part of it, Mr. Taylor. The other part of it is, of course, it's our strong opinion it does not involve a breach of privilege. But we're not making the ultimate decision. The committee will make the recommendation and the House will make a decision, ultimately, on the question.

We think we are on strong ground for our opinion but, as I say, it's not in our power to make a decision and that's why I bring it up. It's also a question of our respect for the committee and we don't want to show any disrespect, or discourtesy, as you put it.

Mr. Chairman: The committee has taken notice of that. We would ask our counsel to give us some advice in that regard and we'd be prepared to inform you.

Mr. J. A. Taylor: What I was trying to define was whether or not it was a legal opinion that was sought of this committee or a gesture from the committee indicating that it would not interpret the issuance of the writ, if there was a legal right to do so, as an act of discourtesy.

Mr. Chairman: Our counsel has indicated he will be prepared to advise the committee on that matter now. Is it your pleasure to hear it?

Mr. MacDonald: Mr. Chairman, if he wants further advice on that may I put a very much related question to him which he may want to reply to now or later? The labour relations board, in fulfillment of its legal obligations, has held a preliminary hearing as to whether they are going to grant the right to prosecute and has brought Mr. Riddell in. They will be making a decision at some point as to whether or not they will grant right to prosecute. As we all know, because we have a copy of it, they have issued a judgement indicating, in their view, there is no breach of privilege in their action. Therefore, my question is, if that is the case there, would it not be a comparable kind of situation with regard to a suit that is being considered, by Mr. MacLean or anybody else, if they feel Mr. Riddell has violated a law of the province?

Mr. Kellock: If I can, I'll answer the first question. My answer to the first question may lead to a disposition of the second one.

I cannot see how this committee can be put in the position of advising Mr. MacLean or his client because any advice that this committee gives is subject to confirmation or otherwise by the House. Secondly, the question that Mr. MacLean asks would produce an answer that may prejudice part of the issues that the committee has to resolve after mature consideration.

I would think that all Mr. MacLean can properly be told, and it's not very helpful, is that he will have to proceed as he may be advised, and his clients will have to proceed as they may be advised. The committee can take into account the fact that he did put the matter before the committee and asked the committee's guidance but, frankly, I cannot see how the committee can give him any guidance at this point.

Mr. Chairman: Mr. Bolan, would you continue?

Mr. MacDonald: Just a minute; we haven't dealt with the second point. Should this committee take under consideration whether or not an action by the Ontario Labour Relations Board is a breach of the privileges of the member? It's all part of the same question.

Mr. Chairman: Could I set that question aside? We will ask counsel about that when we get to the point where we debate this matter. I would ask Mr. Bolan to proceed with his questioning of the witness.

Mr. Bolan: Thanks. Following service of the notice of action on March 16 or 17, you then received a letter from Jack Riddell's solicitor, Mr. Bullbrook, under date of March 20. Is that correct?

Mr. MacLean: That's right, Mr. Bolan, yes.

Mr. Bolan: In paragraph four of that particular letter, if you would refer to it, it states: "In my opinion, the notice of action that you have served upon my client contravenes section 38 of the Legislative Assembly Act . . . I would ask that you would consider what you are doing in light of section 38." On March 20, or shortly thereafter, whenever you received that letter, it was brought to your attention that Mr. Riddell, through his counsel, was alleging that the service of this document was a contravention of section 38. Is that right?

Mr. MacLean: Mr. Bolan, I don't interpret it that way—

Mr. Bolan: I didn't ask you to interpret it.

Mr. MacLean: I think you did.

Mr. Bolan: No, I did not.

Mr. MacLean: You just put the question to me—

Mr. Bolan: Mr. Chairman, if I may: The question which I asked Mr. MacLean was a very plain and a very simple question, and it was this: that he was advised by Mr. Bullbrook that Mr. Bullbrook's opinion was that this was a contravention of section 38. That's all I asked. And that's a yes or no answer.

Mr. MacLean: Mr. Bolan, you used the word "service" of the document—

Mr. Bolan: Okay, the commencement—

Mr. MacLean: —and that's where I part company with that statement, because he doesn't say "service"; there's no objection made in paragraph four, as I read it, as to the service, as to where it was served, if you want to put it that way.

Mr. Bolan: I'm not saying that either. All I'm saying is that in paragraph four of his letter to you, as early as March 20, following service of the notice of action, he raises the whole question of the member's privilege being breached. Isn't that right?

Mr. MacLean: With respect, Mr. Bolan, paragraph four sets forth a statement that may be open to several interpretations. In a general way, he does raise the allegation that there has been a contravention of section 38, yes.

Mr. Bolan: Okay, fine. So you were aware at that time, following receipt of this letter, that this was one of the defences, or that this was one of the allegations of the member, through his solicitor. Isn't that right?

Mr. MacLean: The letter speaks for itself, Mr. Bolan. I would have to agree with you on that.

Mr. Bolan: Okay, fine. Following this, in spite of the fact that you were informed at that time that the member was claiming that his privilege was breached, you or somebody from your office proceeded with three other processes of service on Riddell, namely, the notice of application to seek the consent of the Ontario Labour Relation Board to prosecute him; that was one process, following that letter to you of March 20—

Mr. MacLean: No, that was already before the board, Mr. Bolan.

Mr. Bolan: Okay. When was he served—

Mr. MacLean: The application for consent to prosecute was before the board.

Mr. Bolan: When was he served with that process?

[11:30]

Mr. MacLean: I believe that the letter from the board was dated March 20—that would have been when the notice was sent out, Mr. Bolan. When it was received, I can't say. It would have been some time after that, depending on the post office.

Mr. Bolan: Mr. Chairman, do we have the document which sets out the date when the application to prosecute was made? May we have that information, please?

Mr. MacDonald: Would it be March 20? Addressed to Jack Riddell?

Mr. Kellock: I think there is in the documentation a notice of application or declaration for consent to institute prosecution from Mr. Ainsley. It is dated March 20, but it recites: "'Take notice that the applicant on March 17 made to the Ontario Labour Relations Board"—all right?

Mr. Bolan: Okay. So that process then in all likelihood took place before you received the letter from Mr. Bullbrook under date of March 20? Right?

Mr. MacLean: Right, Mr. Bolan.

Mr. Bolan: In any event, following this letter from Mr. Bullbrook to you under date of March 20, there were two other processes which took effect on Mr. Riddell. One of them is a letter to him under date of March 30. This is from your office and in paragraph one of this letter, at the bottom of paragraph one: "and is intended to be supplementary to a notice of action in this matter." This would have been sent out after you received the letter from Mr. Bullbrook of March 20.

Mr. MacLean: That's right, Mr. Bolan.

Mr. Bolan: And then also on March 31, your office caused to be served on Mr. Riddell again a supplementary notice of action. Is that right? I think that's the date of the supplementary notice of action.

Mr. MacLean: The supplementary notice of action is dated March 31.

Mr. Bolan: Right.

Mr. MacLean: Those documents, however, I want to make it clear, emanated out of the first one. They were part and parcel of the first notice and they were completing and supplementing the first notice.

Mr. Bolan: I realize that, but the fact remains that the process of those documents both took place after you were aware that

the defence, rightly or wrongly, that the member's privileges were being breached was raised in a letter to you of March 20 from Mr. Bullbrook. Is that right?

Mr. MacLean: That's right, Mr. Bolan.

Mr. Bolan: Okay. You mentioned at the beginning of your testimony this morning that when it came to your attention that the member had been making these statements—and I think these were your words—you were concerned about his behaviour. Is that right?

Mr. MacLean: Very concerned about the effect of his behaviour, Mr. Bolan, and the effect on what was already a very difficult situation. It was really a matter of extreme emergency at that time.

Mr. Bolan: In other words, you felt at that time that it was incumbent upon you as counsel for UAW to take whatever action was necessary to—

Mr. MacLean: Preserve the rights of a client.

Mr. Bolan: No, just a minute now. Would you please listen? To prevent him from making further statements. Is that not right?

Mr. MacLean: Further statements in that regard, yes.

Mr. Bolan: Yes.

Mr. MacLean: We were concerned about his union-busting statements, Mr. Bolan. That was what we wanted to stop.

Mr. Bolan: Regardless of whether they were union-busting statements or not—

Mr. MacLean: They were.

Mr. Bolan: —you were concerned about his behaviour and you were prepared to go to any extent at that time to shut him up. Isn't that right?

Mr. MacLean: That is not right, Mr. Bolan. We were not prepared to go to any extent. We were prepared to go to the extent to which we did. We were prepared—

Mr. Bolan: Even if it meant—

Mr. MacLean: —to follow the rule of law, if you want to put it that way, and this is what we did.

Mr. Bolan: Even if it meant shutting him out from dealing with constituents in that area who may have been affected by that strike? Isn't that right?

Mr. MacLean: No, Mr. Bolan, we were concerned about his union-busting statements. He can make all kinds of other statements that he wants to make. We were concerned about stopping the union-busting statements because it was having a terrible effect on the situation.

Mr. Bolan: You heard him in his testimony two weeks ago say that as a result of this action, or actions, or harassments which were commenced against him he was unable to effectively deal with constituency matters which had arisen as a result of that strike. And that he testified the notice of action and the application to prosecute amounted to harassment of him and that he could not effectively deal with constituents who were affected by the strike.

Mr. MacDonald: A point of order: That surely is putting back on the record a judgement of Mr. Riddell which we deem to be irrelevant at this point in seeking facts.

Mr. Chairman: The question was rather long. I believe in your trade, Mr. Bolan, that's what's known as leading the witness.

Mr. Bolan: He's fair game.

Mr. MacLean: He's cross-examining me. Before, he was examining his own witness. Now he's cross-examining me.

Mr. Bolan: Absolutely. What's wrong with that?

Mr. Chairman: I don't think there's any doubt that Mr. MacLean or representatives from his legal firm were here when Mr. Riddell gave his testimony. I'm not sure it's relevant to this committee's purposes to have him acknowledge that he was here. He was. He heard Mr. Riddell state his case. That strikes me as being sufficient. We're supposedly questioning witnesses for facts and not for opinions.

Mr. MacDonald: To complete the record, not only were they here but Mr. MacLean protested what he felt was the placing on the record of judgements with regard to the merits of the situation out there, which we're trying now to get the basic information for a balanced assessment.

Mr. Chairman: The chair ruled at that time, and did again today and will in the future, that a member who raises before the House that his privilege has been breached certainly must have the opportunity to state what he thinks constitutes a breach of his privilege. It's the job of the committee then to assess whether or not in our judgement that actually does constitute a breach. We're not denying the member the opportunity to state his point. But could we now proceed to ask this witness some questions about some facts instead of opinions?

Mr. Bolan: I know. I was asking that all along. However, we'll proceed to something else.

Mr. MacLean: I'm prepared to answer any factual questions, Mr. Bolan.

Mr. Bolan: I'm sure you are, Mr. MacLean. You've been very honest and forthright, and without any hesitancy whatsoever in your answers.

Mr. MacLean: Thank you, Mr. Bolan.

Mr. Bolan: You're quite welcome, sir.

Let's deal now with the question of other parties to this action, particularly to the libel and slander action. You've indicated to Mrs. Scrivener today, and I believe you indicated to me previously, that you did not feel there was anything as far as commencing a libel and slander action goes against the media which carried the remarks of Mr. Riddell. Is that right?

Mr. MacLean: Mr. Riddell, as I've said, was in the eyes of my clients the perpetrator of the defamatory statements and he was the one was making statements which were being interpreted as interfering with union representations. He was the one, therefore, that my clients were interested in dealing with.

Mr. Bolan: Okay. Did you advise your clients that they ought to consider including as party defendants the media which carried these alleged libellous and slanderous remarks?

Mr. MacLean: I cannot answer that question with any degree of absolute certainty. It may have come up. I'm not aware that it did; but it may have come up. Certainly, there was no intention to make a discriminatory selection of Mr. Riddell. The selection was because of what I've already said.

Mr. Bolan: I see. As a solicitor, you're presumably aware of the fact that the carrier of a remark which is libellous or slanderous can also be found responsible for it as well as the person who makes the remark? You are aware of that principle of law?

Mr. MacLean: There is in the law of defamation. Certainly it would appear that it would have been open to bring an action against the press; I am not sure. There may be questions of some sort of qualified privilege on the part of the press. I made no judgement on that, Mr. Bolan. We weren't interested. We were interested in getting at the perpetrator of the defamatory remarks and at the person who was involved in what my clients consider to be unfair labour practices.

Mr. Bolan: You were interested in muzzling Riddell. Isn't that a fair way of putting it?

Mr. MacLean: I don't like that language, Mr. Bolan.

Mr. Chairman: That question is out of order. If you have got further questions, let's hear them.

Mr. Bolan: In any event, I think it's fair to assume that you gave no consideration whatever to commencing a libel and slander action against any other parties who may have been responsible for it.

Mr. MacLean: Mr. Bolan, I said I cannot recall whether the topic came up or not. We finalized on Mr. Riddell.

Mr. Chairman: I remind the committee you have called another witness for this morning and it's almost noon, and I am not trying to muzzle the members.

Mr. Bolan: I am quite certain of that, Mr. Chairman. I have no further questions.

Mr. Chairman: The other witness who was called this morning was Mr. Bullbrook, who has now arrived, courtesy of "Great Shakes" airline, I hope in good health this morning.

James E. Bullbrook, sworn.

Mr. Bolan: I have some questions of Mr. Bullbrook. Before asking any questions, do you wish to make a statement with respect to this matter?

Mr. Bullbrook: The reason I wanted to give evidence, Mr. Chairman, madam and gentlemen, is that I wanted to advise the committee of the necessary undertakings that I had on behalf of my client as a result of the institution of the proceedings, because in law I am his surrogate so that everything I did he in effect had to do and that goes to the question of whether there was a molestation of his privilege in the actions that I, as his solicitor, had to undertake. So I want to litanize for you, if I may, what I have had to do and give you purely the facts.

After the receipt of the notice of intended action from Messrs. MacLean and Chercover from their student-at-law on behalf of all the United Auto Workers in Canada—a class action on behalf of them, a class action on behalf of the members of the local and on behalf of four named plaintiffs—after receiving the information that Messrs. MacLean and Chercover through their student-at-law had served Mr. Riddell, I met with Mr. Riddell and I wrote the initial letter on March 20. I directed a copy of that letter to Mr. Riddell.

I subsequently received information from Mr. Riddell on March 22 that he had received a notice of application for consent. That was mailed to me but not received, because of the mails, for over a week. I subsequently was able to secure a copy of the notice of application for consent to institute prosecu-

tions, and I prepared a formal reply to such and sent it through to the Ontario Labour Relations Board.

[11:45]

I had additional correspondence with Mr. Riddell which I don't intend to elaborate upon. I regard it as privileged information in connection with my opinions as to sections 37, 38 and a myriad of cases, including the Roman case, relating to the privileges of members and the distinction of the privileges of members of the House of Parliament in the United Kingdom, the House of Commons in Canada and the privileges of members of the Legislative Assembly as enunciated under the Legislative Assembly Act.

I subsequently met with Mr. Riddell on March 31 at my office and had him inscribe the reply to the notice of action. I had subsequent correspondence on March 27, March 28, March 29, March 29, March 30, March 30, March 30, March 30, March 31, March 31. I reiterate the times, madam and gentlemen, because each was a separate letter on those dates.

I received communication from the Ontario Labour Relations Board on April 4. I received a supplementary notice of action from Messrs. MacLean and Chercover and replied to them. I want to make it clear to you that throughout that time I was corresponding with their student-at-law on behalf of the United Auto Workers in Canada, all members, against a member of Parliament.

I brought to his attention that I was taking some issue with the continued service upon my client of documents, after I had gone on record with them by correspondence as representing my client. You have before you a copy of a letter from Mr. McNamee serving upon me the supplementary notice of action relative to the London Free Press article and saying therein that he regretted having to serve my client rather than me but the law was the law, and at the same time serving me with the notice of supplementary action. You have a copy of my reply saying that I am sure that he was right in one respect because he did both things. He said he couldn't serve me, he had to serve my client, but on the same day, Mr. Chairman, he served me.

Subsequently the dealings between MacLean and Chercover and my firm have been such. They have been not to my client; they have been to me: on April 10, April 10 two letters to MacLean and Chercover, April 11, April 12, April 12, April 12, April 12, April 13, April 17, April 20, April 20, April 20, April 21, April 24, April 24, April 25, April 28, April 28 and May 4. And that agenda had been brought up to date to that time.

Subsequently my dealings have been primarily on my client's behalf, attendances with him which have now numbered three at my office and eight in Toronto; attendances with counsel in Toronto whom I have retained to deal with the libel and slander action if it is carried forward, and my significant attendances with respect to the Ontario Labour Relations Board consent to prosecute. Those have been the times that I have spent on behalf of Mr. Riddell, my docket shows as of today 87 hours of time that has been conferred to that file.

It is not my purpose to tell you that in the monetary sense to which my client has been obliged, but from the point of view of pointing out what these two processes have cost him in time directly as substantiated by his evidence, and through myself as his necessary surrogate in attempting to protect his interest.

One other comment I would like to make has nothing to do with a judgement or the substance of the actions. What Mr. Riddell did he did. Only he knows what he intended. I don't know what he intended. It will be for your committee and the Legislative Assembly as a whole to decide. I want to say to you that my opinion that I have given to him stands on that. I totally agree with your counsel in his opinion to you that you can't give an opinion to the United Auto Workers as to whether they should serve a writ or not. That's up to them and their lawyer to make that decision.

It was very generous and quite proper of Mr. MacLean to bring to your attention that it was no discourtesy. But litigation is not meant as a discourtesy but as a rectification of rights and rights are really why I am here and involved in this case, because the assertion of privilege is not asserted as a main defence to the matters that my client is involved in. I want to make that amply clear. My client's instructions to me are to assert the question of privilege before the House and before the necessary—

Mr. MacDonald: Point of order, Mr. Chairman. Surely this is part of the argument which we are scheduled to hear at some point.

Mr. Bullbrook: If you would bear with me, Mr. MacDonald, I would appreciate it very much. What I want to do is this; I am trying to lay the groundwork for something because I think it is important for you to know the motivation in the claiming of the privilege in this case, because it has been claimed. Mr. Bolan, for example—

Mr. Chairman: I am going to intervene there. We have decided as a committee that

both counsels will have the opportunity to make a full and complete statement to the committee and I would ask you to preserve any opinions you might have till that time. Mr. Bolan, do you have further questions?

Mr. Bullbrook: Mr. Chairman, I am not finished; I want to state some facts.

Mr. Chairman: I am quite prepared to hear you state facts. I am not prepared to listen to opinions.

Mr. Bullbrook: I most respectfully suggest this to you. Mr. MacLean's parting comment to this committee was that Mr. Riddell's action was adverse to the collective bargaining process. Now, if that isn't an opinion, when you know that the OPP and the Fleck strikers had confronted themselves physically while he was on vacation, before he even came back.

So that's a question of judgement. I don't want to get into judgements. What I want to say are these facts. I have advised my client on the basis of the facts that there is no possibility under law of his being successfully prosecuted before the Ontario Labour Relations Board—successfully prosecuted, because they must prove he was acting on behalf of Fleck Manufacturing.

Mr. Chairman: I beg to differ.

Mr. Bullbrook: So that we claim the privilege there.

Mr. Chairman: I would rule at this point in time that you are now not stating facts. You are stating opinions, and that is going to have to stop. Do you have further questions, Mr Bolan?

Mr. Bullbrook: I want to state another fact. I have in my file—

Mr. Chairman: I am giving the floor to Mr. Bolan to ask a question.

Mr. Bolan: What I have to say before I ask a question is this, surely this man is counsel for Jack Riddell. I have asked him to make a statement based on certain facts as they relate to the question of privilege. One of the facts which he is attempting to explain to this committee is the reason why Riddell is claiming privilege. That is a question of fact as related by Riddell to his counsel.

Mrs. Scrivener: I find that relevant, inasmuch as I pursued that kind of questioning and even led Mr. Riddell to make some comment about what he viewed as his privilege.

Mr. Chairman: Let me make this distinction. This witness has been asked to state facts before the committee. I am prepared to listen to him state facts. Assessment of someone's intentions, opinions of what happened previously, what might happen in the future, I would prefer to leave to the deliberations of this committee at the point in time when we deal with the matter of privileges.

We are not going to get through this thing this morning at all unless we collectively restrict ourselves to asking questions that attempt to elicit facts. Now, Mr. Bullbrook has given us a long list of facts which are there for the committee's consideration and I would like us to proceed in that manner. At a subsequent hearing we will provide both counsels with full opportunity to state their opinions to the committee. And please let us make that division and use them in that way.

Mr. Bullbrook: I very much appreciate the difficulty that you have endured during these rather tortuous and difficult hearings, especially because of the mechanics of same. I apologize to you if I get involved with opinion. It is difficult for me not to do so in pure angelic reciprocity because I have heard opinions for the last three hearings before this committee.

I want to say one other thing as to facts. I have in my file and I am not prepared to disclose the names, 13 signed statements from members—

Mr. MacLean: Mr. Chairman, I take serious exception as counsel for the respondent.

Mr. Chairman: I am allowing you to state your facts. State your facts.

Mr. Bullbrook: The question was asked by Mr. MacDonald of Mr. MacLean, ""Were any union people asked about this?" That was a direct question. Mr. MacLean's answer was, "Not to my knowledge." I am going to give you some facts.

Mr. Chairman: I am asking you to do that without the opinion. State the facts.

Mr. Bolan: Mr. Chairman, with the greatest of respect, it would be my submission that this witness is entitled to give you certain facts to rebut facts which were made available to this committee by Mr. MacLean following a question by Mr. MacDonald.

We are not asking for the names of these people or anything like that, but if these are facts which he has available to put Mr. MacDonald's question and Mr. MacLean's answer in proper balance, then surely if this witness has facts to relate to this committee relating to that question, then it is obligatory for him to give that.

Mr. Chairman: I would point out the only thing that is stopping him from reading that fact into the record is your interjection.

Mr. MacDonald: Mr. Chairman, on the point of order that was raised by Mr. Bolan, the witness may be going to give facts, but I suggest to you the facts are irrelevant because the facts are tantamount to appealing the decision of the Ontario Labour Relations Board which legally certified the union.

Mr. Bullbrook: It has nothing to do with the Ontario Labour Relations Board.

Mr. Chairman: The chair has ruled that the question is in order. We would now like to hear the answer.

Mr. Bullbrook: I have duly signed statements in my file from employees of the Fleck Manufacturing Company. The majority of statements from those people who have signed application cards for the union support the allegations made by Mr. Riddell and on which statements verbally given Mr. Riddell made his original comments. The reason I bring that to your attention is again the question of why we are claiming privilege. It is not to be afraid to defend the libel action because we have a defence of truth and justification, thank you.

Mr. MacDonald: Mr. Chairman, on a point of order, what the witness is doing is challenging the decision of the Ontario Labour Relations Board.

Mr. Bullbrook: It is a libel and slander action. It has nothing to do with the labour relations board.

Mr. Chairman: Any further questions from Mr. Bolan?

Mr. Bolan: No, I have no further questions.

Mr. MacDonald: In your listing of what you did, Mr. Bullbrook, you perhaps have answered some of the questions that I want to put to you, but I want to get them neatly and tidily on to the record.

Did you on your own or on behalf of your client ever extend an apology or make a retraction to the UAW or its counsel in respect to any of the statements made in the transcript of the tape of the CBC on Wednesday, March 15, 1978, or in respect of other statements complained of in the notice of action and supplementary notice?

Mr. Bullbrook: I would submit to you that is entirely irrelevant to the proceedings of this House, but I am going to say to you that I will answer the question, provided I am entitled to elaborate upon my answer. The answer is that I don't know whether Mr. Riddell has. I have advised him not to do so because, in my opinion, the comments that were made were justified under the laws of libel and slander.

Mr. MacDonald: I have a second question. Apart from what is contained in your letter of March 20, 1978 addressed to MacLean and Chercover, did you receive any instructions from Jack Riddell to accept the service of any document on his behalf at your office?

Mr. Bullbrook: My retainer from Jack Riddell is to the effect to defend to the best of my ability any actions taken against him and also to take whatever action is necessary concurrent therewith. The service of documents, in my respectful opinion, is inherent in my retainer. I would suggest any solicitor worth his salt would know that.

Mr. MacDonald: Did you ever advise MacLean and Chercover you would accept documents for service on behalf of your client Jack Riddell?

Mr. Bullbrook: I did not. If I may be permitted to amplify, in my respectful opinion, on the basis of the answer I just gave you, such would have been an absolute redundancy. If someone writes me a letter saying, "I act on behalf of Donald MacDonald," then I presume that I can deal with them on behalf of Donald MacDonald thereafter.

[12:00]

Mr. MacDonald: On what date were you retained by Mr. Riddell to act on his behalf in connection with the application for consent to prosecute and the notice of intended action under the Libel and Slander Act?

Mr. Bullbrook: In writing?

Mr. MacDonald: On what date verbally and then in writing.

Mr. Bullbrook: He phoned me on March 17, I believe it was. My first dealings on his behalf were on March 20.

Mr. MacDonald: Did you receive copies of all the documents with respect to the application for consent to prosecute from the registrar of the Ontario Labour Relations Board?

Mr. Bullbrook: Not to my knowledge. I didn't receive the first one, as my evidence has given. In fairness to the labour relations board, until I gave them the reply, they wouldn't know I was acting for him.

I have advised Mr. Riddell, that the action of Mr. Aynsley in sending material to him, prior to my filing the reply, was quite understandable because of the fact that Mr. Aynsley wouldn't know where else to send it.

Mr. MacDonald: When did you advise the labour relations board?

Mr. Bullbrook: On March 30. We had a time problem there in that Mr. Riddell had sent through the mail to me the notice of application for consent to prosecute. That was in the mail, believe it or not, for eight days. I had to get one myself. I got one through an agent in Toronto going down and getting me one—do you follow me?—and sending it up by courier to me.

Mr. MacDonald: I have had the same experience.

Mr. Bullbrook: The time was getting such that I had to get it in. If I may, I think it is very important, and I hope your counsel would agree, that with respect to all the material that was sent to Mr. Riddell by the labour relations board prior to, say, March 30, I am sure Mr. Aynsley never heard of Mr. Bullbrook. If I may also say—and I didn't elaborate on this but I would like to have the opportunity—I didn't in my litany or my catalogue here, tell you the absolute plethora of phone calls and telegrams that I have had together with Mr. Riddell.

I take it it is their standard fare, but every time the labour relations board sends a telegram, they send it to Mr. Riddell and they send it to me and then they send a letter in connection with it. I was also phoned at 7:45 on the morning of Saturday, April 4, I think it was, to ask whether I would consent to a delay. I was told they were going to phone me at the opening of the Tiger baseball season, the afternoon before, on Friday. I am very pleased they hadn't.

Mr. MacDonald: How often did you take instructions from your client Jack Riddell in order to prepare the reply which you sent to the Ontario Labour Relations Board dated March 31?

Mr. Bullbrook: I attended with him at my office once and made phone calls. I must say I don't have a copy of these but I would think I spoke to him on two or three occasion. That is for the reply to the Ontario Labour Relations Board?

Mr. MacDonald: Right.

Mr. Bullbrook: I think I would have discussed the matter with him on two or three occasions. If I may be permitted to elaborate, the document is 27 or 28 paragraphs long. Only paragraph 26 related directly to Mr. Riddell. It wasn't an onerous task in assessing the proper reply to paragraph 26, a copy of which you have.

Mr. MacDonald: What documents did you receive from the Ontario Labour Relations Board after you advised the board you were acting on behalf of Mr. Riddell and on what documents was it necessary for you to obtain instructions?

Mr. Bullbrook: I wanted to try to avoid actually going through my file. May I try to do it by memory? I would have received the original notice of application to consent through Mr. Riddell. I then would have prepared a reply and sent it through. I would have received an acknowledgement of the receipt of the reply. I received a copy of the reply of the solicitors for Fleck Manufacturing. I received a copy of the reply for the Ontario Provincial Police. I then received a notice of a hearing. I arranged concurrently with Mr. Riddell to meet with him prior to that to decide the question of whether he would appear.

One of the problems that I had involved in this was the fact that sometimes the actual appearance of the body or the person negates any privilege they might want to claim. There are certain cases in that respect. I am sorry to digress, but that was important in assessing Mr. Riddell's case as to whether he would attend before the labour relations board.

There was the phone call I mentioned asking for a postponement because the parties purportedly were coming closer together. Mr. Riddell also has given evidence that he got the same phone call. We agreed to that in writing. Then there was a new date established. We heard of that and I attended. Mr. MacLean and I argued for a considerable length of time before the board. Then I have subsequently received notices that that particular proceedings, because of circumstances of the board and others, has been constantly adjourned for fairly lengthy periods of time and taken up again. I think it's been going on now probably five or six weeks, but I don't know.

As those things go on, I secure notices of that since I'm formalized with the board, although I don't attend before them primarily because of the cost factor. I have someone in my stead.

Mr. MacDonald: Was it necessary for you to obtain instructions from Mr. Riddell concerning the replies submitted by the other respondents, namely, Fleck Manufacturing Company, Bill McIntyre, Bill Freeth, Grant Turner and Ray Glover?

Mr. Bullbrook: Absolutely not. He might have, but I don't think Mr. Riddell has ever seen those replies. I don't know whether they were sent to him or not. I must say I don't know. They were sent to me. I don't think he's ever seen them.

Mr. MacDonald: Did your client ever claim he'd been misquoted with respect to the CBC interview conducted on Wednesday, March 15 or in the statements published in the press and referred to in the notice and supplementary notice of intended action?

Mr. Bullbrook: I have no personal knowledge of that.

Mr. MacDonald: Did you as counsel for Jack Riddell receive a letter from MacLean and Chercover, dated April 6, 1978, and addressed to the Ontario Labour Relations Board, setting forth additional facts with respect to the allegations made against Jack Riddell?

Mr. Bullbrook: Yes, I'm sorry, sir. You do jog my mind. I requested particulars. The allegation that he was acting on behalf of the company was substantiated totally, in my opinion, by a conversation which purportedly took place between Mr. Riddell and one Grant Turner, the vice president. I took the position that that couldn't possibly constitute acting on behalf of the company. They then gave me particulars which, if I may be permitted to say, I don't think substantiate it either. It was just discussion. It was a reiteration of the comments that he has made, that they have translated his comments of "union busting," I think it is, into him acting on behalf of the company.

Mr. MacDonald: Did you submit a reply concerning the contents of that letter to the Ontario Labour Relations Board?

Mr. Bullbrook: I had no obligation to do so. They must give particulars. I don't reply to the particulars. The rules of procedure don't oblige me to reply to particulars. I make a demand for particulars. I'm sorry, it's not a demand but a request for particulars.

Mr. MacDonald: My final question is do you argue that the statements alleged to have been made by Jack Riddell in the letter of April 6 were made by Mr. Riddell as an extension of his parliamentary privilege?

Mr. Bullbrook: I'm not prepared to answer that question. That will be argued before the appropriate tribunals. I haven't asserted it, nor is it within your terms of reference. That would come within section 37 of the act. You're not dealing with section 37. If you want to, there is extreme body of law on the question of the extension of the internal privileges within the chamber. That relates to your section 37. There is the Roman case, for example, where Trudeau and Greene were found to be not subject to a libel action. It wasn't a libel action; it was an action for negligence. They were found in that case, in effect, to be involved in an extension of the privilege that Mr. MacDonald has contemplated under section 37.

Some day before a tribunal, that is, before the Supreme Court, I might well argue the extension of section 37, but I'm not arguing it here.

Mr. MacDonald: You indicated earlier you intended to do that. Is that still your intention?

Mr. Bullbrook: To argue that?

Mr. MacDonald: Yes.

Mr. Bullbrook: It's not only my intention, it's my absolute unequivocal obligation as a lawyer to put forward on my client's behalf all defences under fact and law.

Mr. MacDonald: Are you aware of the fact that the Ontario Labour Relations Board has provided a written judgement to the effect that there is no violation of privilege in their action?

Mr. Bullbrook: I certainly am. If I might comment on that, since you've asked the question, I've had the opportunity of reading it.

Mr. MacDonald: I only asked whether you were aware of it. I'm not soliciting your comment on that.

Mr. Chairman: The answer is yes. Are there further questions from the committee?

Mr. Bullbrook: You don't want me to comment on that?

Mr. MacDonald: I'm not asking you to comment on the contents. I just wanted you to be aware.

Mr. Bullbrook: It's a strange circumstance that you permit the question and you don't permit an elaboration.

Mr. MacDonald: My question was: Are you aware of the judgement of the Labour Relations Board stating that in its view there is no violation of privilege?

Mr. Bullbrook: I would be a desultory counsel if I hadn't read that decision already, I would suggest.

Mr. MacDonald: That's the answer and that's my last question.

Mr. Chairman: Counsel has several questions.

Mr. Kellock: Mr. Bullbrook, my record doesn't have the reply filed with the labour board on behalf of Mr. Riddell. We seem to have everybody else's reply, but we don't have Mr. Riddell's reply, and to complete the record, could we have copies?

Mr. Bullbrook: I'll see that you have that. Do you have a copy of the particulars given as a result of my reply?

Mr. Kellock: No.

Mr. Bullbrook: I'll see that you get that also.

Mr. Kellock: My other question is not so much to do with your evidence, but just to help me in helping the committee when we come to the argument or the submission. It was my understanding that you took the position that section 37 might have something to do with the committee's inquiry, and I suggest to you that that is arguable. The Roman case is arguable, and if you're stating flatly that you're not going to make that submission that can cut my work by a third.

Mr. Bullbrook: I'm sorry, I misread the terms of reference. I wasn't at all happy with your terms of reference. I would very much like to have argued the extension of the Roman case and section 37, the possibility of the question of jurisdiction where the actual comments were made. But I thought your terms of reference related only to section 38.

Mr. Kellock: There has to be some submission as to what the terms of reference mean, because one way the terms of reference can be read is that the order has prejudged whether or not there has been a breach of section 38. I don't think anyone would take that position. That being the case, the key words may be "the service." That leads us into what was served, and not whether either proceeding is well founded, but what is the nature of those proceedings and is there any immunity from that process.

Mr. Bullbrook: I want to be frank with you. What I intend to do, therefore, as a result of counsel's comments, is deal with the question of section 37 as well, although I must say that as far as these proceedings are concerned, it becomes to a great extent the question of section 38. The burden of my submission will relate mainly to section 38.

Mr. Chairman: Thank you, Mr. Bullbrook. We have decided at previous meetings that we would entertain a final submission or presentation, or whatever you'd like to call it, from the counsel for both Mr. Riddell and for the UAW. We have a small scheduling problem. Our own legislative counsel, I think, should be present when those submissions are heard. The first date when he could possibly be available is June 15. If it is agreeable then, we will schedule that submission for that time and if there are problems for members of the committee, could I be informed of them now? It's rather important, since that will be the final kick at the cat, so to speak, for both of these counsel that we arrange to do that. Is that agreeable?

Mrs. Scrivener: Perhaps counsel would mark off on his calendar our meeting dates until such time as we're through with this, because we've run into this before and it creates a break in the continuity and certainly runs us into a delay as we get far into June.

Mr. Chairman: We can take that into consideration. Mr. MacLean, is that date suitable to you?

Mr. MacLean: I haven't a complete diary with me. I was sort of counting on June 8. I wasn't aware of Mr. Kellock's problem. I wonder if I could approach Mr. Kellock if for some reason I'm tied up at the board on that day? I don't know about June 15.

Mr. Bullbrook: I wanted to say I can't be here on June 8. It's an impossibility. I want to convenience the committee as best I can. June 15 is fine for me, but I just can't get here on June 8.

Mr. Chairman: I'll tell you my concerns as chairman. I would emphasize the importance of the final submissions from counsel on both sides. I would like all to be present, and particularly I would like our counsel to be present. It appears to me that June 15 is the first possible date when both counsel and members of the committee could be present. I see some value in giving us a small period of time, particularly because the Hansard will be relevant when we get to the stage where the committee debates this.

[12:15]

I am approaching with some concern the fact that we may not be able to report to the House by the end of this session, which is June 22. I'm going to entertain some informal discussion with the House leaders that if in the future we are given such cases to be heard, we be granted permission to sit consecutive days so we won't have this kind of dispersal of time, which I find annoying to say the least. If they want us to do this kind of work, they should tell us to go off for two or three weeks or whatever and hear it.

Mr. MacDonald: Could I get a clearer picture of what is likely to be the timetable, Mr. Chairman? Can I assume each of the periods of the 15th and the 22nd are likely to be occupied first by one argument, say by

Mr. Bullbrook, and the second by Mr. MacLean?

Mr. Chairman: It is my hope that both counsels could be heard on the same day. That would give us some continuity. My problem after that is if the House does adjourn on June 23, as appears likely at this point in time, it would cause our counsel some difficulty in getting his presentation ready and would not provide anything more than one occasion when the committee could sit.

Mr. MacDonald: Perhaps we could schedule a meeting for July 1 to hear from counsel.

Mr. Chairman: I should point out to the committee that if we want to proceed with a recommendation to the House before the end of the session, it's obvious we need more occasions when the committee can sit. I will attempt to get that, but I point out to you that the end of every session always turns out the same way. They schedule the Wednesdays and the evenings and they start locking things up and there are nine million committees at work around here.

Mrs. Scrivener: For that reason, I'm a little concerned that we don't meet on this matter next week. I am wondering if there is an alternative time. I know what a dreadful proposal that is, considering how very busy everybody is. I have Monday evening in mind, for instance. Is it likely we could pick some time of that nature and schedule the presentations from the two solicitors at that time?

Mr. Kellock will also want to prepare his statement to us and we have to allow him enough time for that. I would hope it will be in a written form so we can peruse it before coming in to discuss it. All of this takes time, and we're running out of it.

Mr. Chairman: Is it the committee's desire that I approach the House leaders and make the attempt to set up alternative days when the committee could sit on this matter?

Mr. Kellock: To answer Mrs. Scrivener's question, I would point out that unfortunately I am starting a trial out of town on Monday. It's not a question of next Thursday or next Monday evening. I'll be gone the full week and perhaps the following week.

Mr. MacDonald: Is it possible for the chairman to explore the possibility of consecutive meetings from June 15 on, so that we can hear both counsel, if they don't go into one session; then adjourn for such time as is necessary for our counsel to prepare his advice to us, so we can get the thing cleared off by June 23?

Mr. Chairman: I will attempt to meet with the House leaders and schedule additional meetings of the committee.

Mrs. Scrivener: As a point of information for the committee, could we have presented to us the information concerning how many documents, papers, and things in connection with this entire action have been received by Mr. Riddell?

I've heard various recountings, deliberations, and testimony. I would like to know precisely how many—not telephone calls—documents, papers, and things Mr. Riddell received in connection with this case. I'd like to know that.

Mr. MacDonald: I assume that's in the record.

Mr. Kellock: Generally speaking, it is.

Mrs. Scrivener: He did not complete it. I don't really want an itemized list. I just want to know the numbers.

Mr. Chairman: We could ask our counsel to provide whatever information he might have available to hand to the committee members in that regard. I don't think we're going to get an accurate thing.

Mr. MacLean: I wonder if I could speak to the committee concerning the documentation. Mr. Bullbrook in his testimony referred to some documents that he had received later in April. I have no knowledge of those documents. It is my respectful submission that those documents should be filed with the committee so that the committee can see them. Any documents that he relies on should be filed with the committee. That's my submission.

Mr. Kellock: We've only asked for two. One is the formal reply and the second is the statement of particulars. I gather that the contents of the other documents are not of interest, but just the fact they came into existence.

Mr. MacLean: Not necessarily, Mr. Kellock. The contents are of interest because of where they came from.

Mrs. Scrivener: In the light of Mr. MacLean's remarks, I'll amplify my request and ask for a list, including the dates, the source and the reference as to what the document is about, that is, the style or type of document, whether it is a telegram or notice of writ or whatever.

Mr. Kellock: Mr. Bullbrook can supply one list and Mr. MacLean can supply another list and they can both be put together.

Mrs. Scrivener: I'm concerned about Mr. Riddell. I want to know how many Mr. Rid-

dell received. I'm not concerned about how many Mr. Bullbrook received.

Mr. Chairman: To answer your request, we will attempt as best we can to provide you with such information. We have testimony from both counsels, and from Mr. Riddell making reference to these documents. I think it's a request that our counsel could attempt to fulfil.

Mr. MacDonald: I think Mr. MacLean's point is a very valid one. In addition to a listing of the dates, the source, and a general description of them, it seems to me that if you're going to go to this trouble we should have a copy of the document because the contents of that document may be of importance to all concerned.

Mr. Chairman: Is it the consensus of the committee that you want all the documents tabled with the committee? I point out to you that's a tricky task. For example, Mr. Riddell made reference to telephone notes which children took. I'm not sure that you want those tabled.

Mrs. Scrivener: We're concerned about section 38.

Mr. Chairman: You want them tabled?

Mrs. Scrivener: Yes. I don't know that we have to have all of Mr. Riddell's documentation tabled. I want to know how many papers and things he received. He made a point about this in his last statement to us. I want to know what these numbers are because he had carbon copies of all the correspondence.

Mr. Chairman: Is it agreeable that we attempt to provide for the committee members a list of the numbers and as much information as we can, just short of asking that all of them be tabled? Is that agreeable?

Mr. MacDonald: I'm not a lawyer and, therefore, I'm not familiar with the inhibitions and the problems that that creates. If you're tabling a list of documents it seems to me that the document is a page or two—at the most, four or five pages; most of them are one page—we should have a copy of that document so that the person who wants to examine it will have some full information as to its contents.

Mr. Chairman: Let me hear from the committee. There's no question the committee has the authority to subpoena any document.

Mrs. Scrivener: That's just a slew of paper.

Mr. Chairman: I know.

Mr. Bullbrook: I have to say, if I may, there has been material that has gone between Mr. Riddell and myself, of which I am certainly not going to give you copies. I shouldn't say I am not going to permit it but I ask you to reconsider it.

Mr. Chairman: Yes, I'm trying to deal with it in a reasonably sensible way. Is the committee insisting that all documents made reference to during the course of these hearings be tabled with the committee?

Mrs. Scrivener: No, Mr. Chairman.

Mr. MacDonald: They should be, Mr. Chairman.

Mr. Chairman: I want a motion to that effect. Let's hear it.

Mrs. Scrivener: It's my motion, Mr. Chairman.

Mr. MacDonald: I will move an amendment that all documents that do not fall into the category of a confidential lawyer-client nature should be tabled with the committee.

Mrs. Scrivener: You're subverting my original request.

Mr. Chairman: No, I'm hearing a motion for the first time, Mrs. Scrivener. The motion is duly before the committee. Is there any discussion on that motion?

Mr. MacDonald: Are you hearing my amendment?

Mr. Chairman: No, I haven't heard a motion because she did not say "I move."

Mrs. Scrivener: I didn't have an opportunity.

Mr. Chairman: That's right. I did hear Mr. MacDonald's motion. The motion is clear to the committee.

Mr. Bolan: What's the motion?

Mrs. Scrivener: I didn't get it down.

Mr. Chairman: I'll ask you to do it in writing.

Mr. MacDonald: Have you got a motion from Mrs. Scrivener?

Mr. Chairman: No.

Mrs. Scrivener: I was drawing breath when you made an amendment to the motion you thought I was going to make.

Mr. Chairman: We'll start again. Mrs. Scrivener, would you care to move your motion?

Mrs. Scrivener: Mr. Chairman, I move that this committee be provided with a list of all the documents, papers and things received by Mr. Riddell in connection with this action and that list shall contain the dates, the originators of the papers and general remarks concerning the content or the style of the document.

Mr. MacDonald: My amendment is that in addition to the source, the date and a general

description of the document that the document itself should be reproduced, with exception of those documents that would fall legitimately into the category of client-lawyer relations.

Mr. MacLean: We are concerned that the contents of the document may be very relevant in the assessment by the committee as to the circumstances and as to whether or not there has been a violation of the statute. The contents of the document are important.

Mr. Chairman: I have a motion from Mrs. Scrivener and an amendment from Mr. MacDonald.

Those in favour of Mr. MacDonald's amendment?

Those opposed to his amendment?

The amendment is lost.

Any discussion on the main motion by Mrs. Scrivener?

Mr. Kellock: I have a cautionary statement on this one. This apparently embraces solicitor-client communications? I don't know whether you intended that.

Mrs. Scrivener: Yes, I said all papers.

Mr. Kellock: You did?

Mr. Haggerty: All papers and things.

Mr. Chairman: That's the motion. Is there any further discussion on that motion?

Those in favour?

Those opposed?

The motion is lost.

Is there any further business?

Could I ask both of the counsels to provide our counsel with an outline of the legalities which you intend to pursue on that? Would that be agreeable?

Mr. Bullbrook: Mr. Chairman, it is my intention to prepare a total written submission that I intend to distribute to your counsel.

Mr. Chairman: Is that agreeable, Mr. MacLean?

Mr. Maclean: Yes, I have that in preparation now. I shall provide each of the committee members with a copy.

The committee adjourned at 12:27 p.m.

SPEAKERS IN THIS ISSUE

Bolan, M. (Nipissing L)
Breaugh, M.; Chairman (Oshawa NDP)
Haggerty, R. (Erie L)
MacDonald, D. C. (York South NDP)
Scrivener, M. (St. David PC)
Sterling, N. W. (Carleton-Grenville PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Witnesses:
Bullbrook, J. A., Counsel for J. K. Riddell, MPP (Huron-Middlesex)
MacLean, L. A., Counsel for members of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)
McNamee, J., articled student-at-law, MacLean and Chercover

Assisting the committee:

Kellock, B. H., Counsel for the Committee

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Official Report (Hansard) Daily Edition

Procedural Affairs Committee

Proceedings against Member for Huron-Middlesex (Mr. Riddell)

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Second Session, 31st Parliament

Thursday, June 15, 1978

Speaker: Honourable John E. Stokes
Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

THURSDAY, JUNE 15, 1978

The committee met at 10:16 a.m.

Following other business:

PROCEEDINGS AGAINST MEMBER FOR HURON-MIDDLESEX (MR. RIDDELL)

Mr. Chairman: We have a problem. As you recall at the last meeting of the committee, the committee decided it would ask each counsel to provide a summation to the committee. Both counsel at the previous meeting had agreed that today would be a suitable date. In fact, we moved the committee meeting around on this matter so that it would accommodate both members. At the end of that meeting the transcript shows that both counsel had agreed this was an acceptable date for each of them and that they would be present.

On Tuesday of this week, I was given a note indicating that Mr. Bullbrook could not be present this morning. Subsequent to that I asked our counsel to ascertain from both lawyers whether or not they would be here. Mr. Bullbrook will not be in attendance this morning. Mr. MacLean is in attendance this morning.

That leaves us with a small procedural problem to deal with. The committee has extended, in my view, an invitation, an opportunity for both lawyers to present their case this morning. We have not, anywhere through the course of these proceedings, used our power of subpoena; so there is no oblibation on them to attend. You may recall, in the case of previous instances where we were asking for witnesses, we allowed them the option of whether they wanted to appear or not; it was put in the form of an invitation from our counsel. But we did not use any subpoena.

The committee then is faced with a decision. Do you wish to proceed this morning? If so, in what way? To my mind, after reviewing this with our own counsel, there are two or three acceptable routes.

First of all, you could stand it down totally. I would remind you that if you intend even to report to the House by the end of this session, that will probably scuttle that plan entirely; and that means a break in the proceedings of at least some four months.

Secondly, since one of the counsel is in attendance this morning, you may decide that you want to hear him.

Thirdly, you may decide that you want to hear neither, that you would either not hear from them at all or ask each of them to provide a final submission in writing for the consideration of the committee.

Those are the options that I see before you: We don't proceed at all. We proceed and allow Mr. MacLean to be heard this morning. We proceed this morning in a formal way but we ask each counsel to make a written submission to the committee.

There may be other options that I am not aware of. Those are the ones that traditionally have been used and would seem to be in order. Could I entertain some discussion from the members of the committee on how they wish to proceed?

Mr. MacLean: Mr. Chairman, I wonder if I could address the chair, first of all, on my position in so far as proceeding today is concerned.

Mr. Chairman: Could I ask you to hold for a moment, and I will ask a member of the committee to call you before the committee?

Mr. J. A. Taylor: Mr. Chairman, may I say initially that it disturbs me that these proceedings have been so protracted and, by being drawn out the way they have, of course, it doesn't do very much for continuity. I'm not fully aware of what other spinoff there may be from the time frame, but there may be other ramifications as well.

Have you heard from counsel—in particular, I gather one legal counsel has indicated that he cannot be here—as to what is the wish? Was there some suggestion that there be an alternative date for a submission? Was there an interest in making a submission?

Mr. Chairman: Perhaps I should let Mr. Kellock, our legal counsel, whom I asked formally yesterday afternoon to contact both lawyers. I asked him yesterday afternoon to do a formal contact and reaffirmation, which we have done on other occasions. I might ask him to report to the committee.

Mr. Kellock: Mr. Chairman, the information you have relayed to the committee concerning Mr. Bullbrook's absence is accurate. I have nothing to add to it. I can only advise the committee that the reasons for Mr. Bullbrook's absence are not known to me, except for the statement concerning some municipal board hearing, because Mr. Bullbrook would not discuss with me the reason why he was not going to be here or any other alternatives. The conversation was rather short.

Mr. J. A. Taylor: It strikes me that there may not be a keen desire on the part of one or both counsel to make submissions. If that is the substance of the matter, then I certainly wouldn't press counsel to make submissions. I think it should be elective on their part.

[10:45]

Mr. Bolan: Mr. Taylor's inquiry is a very legitimate inquiry. I first brought this to the attention of the chairman after Mr. Bullbrook telephoned me on Tuesday and also after Mr. Riddell spoke to me on Tuesday. Mr. Riddell and I were advised by Mr. Bullbrook at that time that he had started an Ontario Municipal Board hearing on Tuesday of this week, that they had part of the day of hearings and the balance of it was adjourned for continuation today. He said there was no way that he could avoid the adjournment of the OMB hearing. I then inquired of Mr. Bullbrook if he wished to make verbal representations. He said he definitely wished to do so and did so because the member aggrieved, Jack Riddell, wants his counsel to make verbal representation.

Mr. Riddell is here today if you want to ask him questions about this—about what his position is on his counsel making verbal statements. Mr. Riddell can confirm a similar conversation which took place between him and Mr. Bullbrook as to why Mr. Bullbrook is not here today. Mr. Bullbrook advised me that he was available for any day next week to make his submissions if the committee is prepared to hear his submissions at that time.

I think the main point is the fact that the person allegedly aggrieved, Mr. Riddell, wants his counsel here to make these representations. However, you being a lawyer, Mr. Taylor, will know some of the problems that one runs into with courts at times. You simply cannot be both places at the same time.

I don't know what priority the Ontario Municipal Board has over the procedural affairs committee. All I'm saying is that this was the information provided to me by Mr. Bullbrook. I am in no position to challenge that statement of his, no more than I was three weeks ago when our own counsel, Mr. Kellock, told us that he could not be here on June 8. Nobody questioned that. You take these things; you will accept the word of counsel on this. But the point to emphasize is that Mr. Riddell wants his counsel here. That being the case, I think this committee should go out of its way to accommodate the member.

Just one other point, if I may, now that I'm on this: Even if both counsel had been here to make their submissions, I still think we would be in great difficulty as far as getting this report to the House by June 23 is concerned. That is the prescribed time. I think the time constraints are such that we may be under pressure to have the report ready by then. We're dealing with a very delicate issue, one which has never been raised before, and I wouldn't want to see us rush into something—

Mr. J. A. Taylor: We certainly couldn't be accused of that.

Mr. Bolan: But you have to remember, Mr. Taylor, if the party allegedly aggrieved insists on having his counsel here, then he should not be denied that.

Mr. J. A. Taylor: I'm not suggesting that. If I may—

Mr. Bolan: Furthermore—I'm not finished yet—Mr. Riddell advises me, and he is prepared to make this statement to the committee this morning—that he has no objections to this committee standing down until the House resumes in the fall.

He is the person who is allegedly aggrieved, so that if he has no objection to the matter going over until the next session, then I really see no difficulty with this committee acceding to his wishes on the matter.

Mr. J. A. Taylor: Mr. Chairman, I didn't mean to imply that Mr. Bullbrook did not have a legitimate reason for not being here today.

What I might have intended was that he might have second thoughts in terms of the need for making a submission. I gather that matter has been clarified and Mr. Bullbrook does indeed wish to make a further submission or summation on behalf of his client.

I would have thought time would be of the essence in a matter such as this, or at least, have some relevance. It disturbs me that it doesn't appear to have as much relevance as I would have attached to it. I would think legal counsel certainly should be afforded the opportunity of making their submissions. I,

personally, would like to have heard the two submissions together or in close sequence. I think there is no doubt Mr. MacLean will have something to say about this. Surely he will, but before he does, it may be we will want to determine the position of the committee in regard to a further protraction of these proceedings.

Mr. MacDonald: Mr. Chairman, I'm always puzzled by procedures in the legal profession. As a layman, I have led a life of mystification on this score. It seems to me Mr. Bullbrook had a choice: the choice was he would honour his commitment to be here, or he would honour the commitment to be with the OMB on Thursday. He has chosen to go to the OMB rather than be here because presumably, he deems it to be more important or our inconvenience is of less consequence than the inconvenience he would have created by saying he could not be with the OMB. That's a statement of fact.

I am very concerned about this being held over. I want to make a motion, assuming we can get the agreement of the counsel. We have the agreement of Mr. Bullbrook, because he is available any day next week. My motion seeks permission for this committee to meet on Monday to hear Mr. Bullbrook, on Tuesday to hear Mr. MacLean, and that we meet on Wednesday ourselves, or Thursday if necessary, to come to our conclusion, in the hope we might be able to report before the 23rd. I think the proposition of sitting around for four more months makes a mockery of the whole process. Justice delayed is justice denied. If a member's rights have been infringed, I think this kind of protraction, I repeat, makes a mockery of the whole process in resolving the problem.

My motion is we would meet on Monday, Tuesday and Wednesday or Thursday to conclude this next week.

Mr. Chairman: A motion of that nature is in order. Could we now speak to that motion? Mrs. Scrivener.

Mrs. Scrivener: Mr. Chairman, I have to say, in the first instance, I disagree with Mr. MacDonald and his comments about Mr. Bullbrook's choice. After all, he was not subpoenaed. Had we done that, I think then he could have pleaded that to the OMB. Perhaps this was not possible. We don't have a direct statement, so it's all conjecture on our part.

However, in terms of Mr. MacDonald's remarks concerning his motion, I agree we should proceed. I think what we've got at the moment is a gross waste of everyone's time. Just the very fact we have legal counsel attending us at this time means the clock is running as far as their fees are concerned.

I would like to amend Mr. MacDonald's motion to suggest Mr. MacLean speak right now, since he is here and prepared to move on. That very next possible time you can arrange, Mr. Chairman—either Monday or Tuesday of next week, as early as possible, and I'm willing to sit next Monday evening—we should proceed with Mr. Bullbrook and then hear from Mr. Kellock. We should just keep moving this ahead until we do finish it up and get it done before the 23rd.

Mr. J. A. Taylor: Mr. Chairman, there is an option of course that will not be considered if Mr. MacDonald's motion carries. That is that we proceed today in any event, in absence of counsel, if counsel is not here. I'm not suggesting that we do that. I'm just saying that that is another option, and I think in fairness we should hear Mr. MacLean before we put the motion. He is here today. There is some suggestion that we proceed to hear legal counsel. I don't know in what order—

Mr. MacDonald: That's the amendment. The amendment is that we proceed with Mr. MacLean today.

Mrs. Scrivener: Today; my amendment states that.

Mr. J. A. Taylor: I think that, certainly in fairness, Mr. MacLean expected the other legal counsel to be here today as well, and it may or may not be relevant in terms of how he wants to present or make his submission. Actually I see nothing wrong in hearing from him before we deal with the motion.

Mrs. Scrivener: Mr. Chairman, surely it's not relevant in what order we have them. We aren't having a debate here and we are not having rebuttals by counsel, surely. We're simply receiving statements from counsel, are we not, on behalf of the respective clients? So it's irrelevant as to when they make their statements. The point is, I want to receive their statements and at the earliest possible time.

Mr. Chairman: I should point out, for the committee's information, that the committee did decide at its previous meeting that we would hear final submissions from counsel for each side. That does not infer any cross-examination. It does infer of course some rebuttal and you did decide on an order in which those statements would be heard. The order was that Mr. Bullbrook would be heard and then Mr. MacLean, in that order.

Mr. J. A. Taylor: Then presumably, Mr. Chairman, Mr. Bullbrook would have the right of reply. Is that implicit in your—

Mr. Chairman: That was not implicit, but we can certainly hear of such a motion.

Mr. J. A. Taylor: If that is the procedure, then it would be desirable, certainly, to have the counsel here together on that. The other option, of course, if it's a matter of a submission and a legal counsel isn't here, is would he wish to make a written submission in his absence?

Mr. Bolan: If I might speak on the amendment to the motion: I agree with Mrs. Scrivener, and I'm prepared to support the amendment. I don't think it matters who goes first or who goes last. As it's been pointed out, this is not going to be a debate. There are two sides presenting their arguments, and there is no reason why Mr. McLean cannot be heard today and we can have Mr. Bullbrook here on Monday.

I want to mention also, in passing, that my reference to the fact that Mr. Riddell would have no objections to having this matter go over to the next session was not in the form of a motion. He was not asking for that. He was merely saying that if it was any assistance to the committee and parties involved, he was prepared to consent to that. That's all I'm saying; that's all that he was saying. However, I am prepared to support the amendment of Mrs. Scrivener, and I see no reason why we can't get on with the matter this morning. Thank you, Mr. Chairman.

Mr. Chairman: Any further discussion on the matter?

Mr. MacDonald: Mr. Chairman, Mr. Taylor made the suggestion that Mr. MacLean should be given an opportunity to express his views on this procedure, and I would remind the committee that we made a decision; a decision agreed on by everybody on the committee and with counsel that we would meet, that both counsel would be here, that we would hear Mr. Bullbrook first and Mr. MacLean second. I think that any proposal altering that order is just fulfilling the objective that maybe wasn't intended, but was going to flow from the fact that Mr. Bullbrook is not here.

Mr. Bolan: Just what are you implying by that anyhow?

Mr. MacDonald: I am implying that you can do your own guessing.

Mr. Bolan: Just what are you implying?

Mr. MacDonald: Protract—

Mr. Bolan: Are you implying impropriety?

Mr. MacDonald: I am implying that Mr. Bullbrook had a commitment to be here and he also had a commitment to be in the OMB and he came—

[11:00]

Mr. Bolan: Do you know that the Ontario Municipal Board is a court of record and if you don't appear before that board when you're required to appear you can be held in contempt of court, which is contrary to what this committee can do? Do you realize that?

Mr. Chairman: Order.

Mr. MacDonald: We should hold him in contempt of this committee, since he made a commitment and he's not willing to honour it.

Mr. Chairman: Order. I have an amendment to a motion. The amendment is that Mr. MacLean be now heard. I should point out to the committee that this is not in agreement with the previously agreed procedure that we had established in the committee, but the motion and the amendment to the motion are in order. Are you ready for the vote on the amendment?

Mr. Bolan: I'm just wondering, if Mr. MacLean should not—

Mr. MacLean: I'm here on behalf of the respondents and I'd like an opportunity to speak.

Mr. Bolan: I think he should be given an opportunity to speak.

Mr. MacDonald: Mr. Taylor has already suggested that speaking to procedure, not to the substance, Mr. MacLean should be permitted to speak. I would support that and I assume Mr. Bolan is supporting it.

Mr. Bolan: Absolutely.

Mr. Chairman: I would be prepared to entertain a setting aside of the motion and the amendment and I would point out to you that Mr. Taylor has suggested that Mr. MacLean be allowed to speak. I'm taking that in the very strictest sense that he is now being allowed to address the committee and that this is not intended to be, nor will it be, his final submission to the committee. Is that agreed?

Mr. J. A. Taylor: That's understood.

Mr. Chairman: All right. Mr. MacLean, would you care to address the committee?

Mr. MacLean: Mr. Chairman, and members of the committee, I would like to address you concerning the matter of procedure. At considerable inconvenience to myself, in manipulating other cases to be here, I'm here today as a result of the commitment I gave the last time. My clients are here. We are anxious that this matter be dealt with

and disposed of as quickly as possible, but to say that I should go first, in my submission, is repugnant to the principles of natural justice.

We are being accused of improprieties. This is not just a debate, we are being accused of improprieties. We'd like to know the case that we have to meet before we make the argument. We are the accused. I don't know what kind of a procedure this is if we're called on first. What are we supposed to do? What case are we supposed to answer? Mr. Chairman, and members of the committee, I feel very strongly about this, and I'm sure the lawyers on this committee know what I'm talking about. We are the accused, we'd like to know the case that is being made against us, we don't know the case that's being made against us, we can't answer.

I have a long argument to present to this committee, which will likely take me at least a day. I don't know how much of that argument will be academic, until I have heard the accusations and the argument that is being made against us. I don't want to use up unnecessary time of this committee by making academic arguments. I think the basic principles of natural justice require that we be informed of the case being made against us before we're called upon to argue. I realize and I appreciate the particular and special procedures followed by this committee and the reasons for them, but I think this committee is concerned with the principles of natural justice, and that's what we're asking for.

We're going to be denied that if I go first, because I don't have a ready reply. I'd like to know the case that's being made against us. I can't argue a case properly unless I know the case that's being made against us. We are the respondents. I'm quite prepared, Mr. Chairman, to accept the procedure suggested that we proceed on Monday and Tuesday. I can manipulate some more of my cases and be available, but after those dates I'm not available. I set a case aside so that I could be here today. I think this case should be finished as soon as possible. I'm prepared to be here on Monday and Tuesday.

Mr. Chairman: Are you finished?

Mr. MacLean: No.

Mrs. Scrivener: I am a little surprised—

Mr. Chairman: Excuse me for a moment, I'd like to give Mr. MacLean the opportunity, since he was invited to state his case, to state it.

Mr. MacLean: I think, Mr. Chairman, that I would like to put my case to the committee verbally. There was a suggestion that the committee receive written argument. I'd like to put the case to the committee verbally, because I have an awful lot to say. I have a long argument to put to the committee, and I think it would be much more appropriate to do that and to communicate that argument verbally than it would by submitting a written brief. But there's no way that I can even get started at it today if I were to get into it.

Again I come back to the principle that I shouldn't be called upon first, and I object strenuously to being called upon to present an argument without hearing the opposing argument, the accusing argument. I don't think I have anything further to say.

Mrs. Scrivener: Mr. Chairman, the fact is that—

Mr. Chairman: Could I have a little order here, please? We'll take questions now to Mr. MacLean while he is here. Mr. Bolan and then Mrs. Scrivener.

Mr. Bolan: Mr. MacLean, I agree with the proposition that you're advancing, that you should go after having heard counsel for Mr. Riddell. You mention that you would be a day—

Mr. MacLean: I would be—

Mr. Bolan: Assuming that we start on Monday with Mr. Bullbrook, when you speak of a day, do you mean five hours, six hours?

Mr. MacLean: I'm talking about that. Depending upon what Mr. Bullbrook has to say, and I'm only guessing, I would think that a day would be upwards of four hours—

Mr. Bolan: Right.

Mr. MacLean: —if not the whole day. We're usually a little short on our submissions in that regard. I'm being chary in being overconfident, Mr. Bolan.

Mrs. Scrivener: Mr. Chairman, inasmuch as this action commenced with Mr. MacLean and his clients, I find his remarks a little on the outside. However, looking at my watch and considering what is practical, I have to agree that it is unlikely, if Mr. MacLean has a lengthy statement to make, that we would be able to get this completed before we have to go into the Legislature at 2 o'clock. Therefore, if you are prepared to receive it, I am prepared to offer you a motion for adjournment at this time.

But before that motion is made, Mr. Chairman, I think there should be a procedure laid down in strict form next week—and maybe, if it's necessary, just to protect the par-

ticipants—that we should perhaps be issuing subpoenas so there could be no doubt as to what is required of the people appearing before this meeting; and at the same time give them some stronger position as with Mr. Bullbrook, for instance, before the OMB.

The other thing that occurs to me is that if we are to have such lengthy argument presented to us, and Mr. Bullbrook is to go first and then Mr. MacLean is to make a lengthy response—and it's obvious that he is going to make a response to Mr. Bullbrook—then I think you have to proceed in the usual way and provide time for Mr. Bullbrook then to rebut, because that's a normal procedure if it's done in that way.

When I made my earlier amendment to Mr. MacDonald's motion, I thought we were simply going to receive statements from counsel containing argument relating to their respective clients' position. It appears to me that it's going to be very much more than that; therefore, I think you had better follow a position and provide for a rebuttal.

I would move adjournment, Mr. Chairman.

Mr. MacDonald: Is a motion for adjournment debatable?

Mr. Chairman: No, it's not, and it's always in order; it has been moved by a member of the committee. I'll take a vote on that.

Those in favour of adjourning the meeting at this time, please indicate.

Those opposed?

Can I have that again?

Those in favour?

Those opposed?

The committee adjourned at 11:09 a.m.

SPEAKERS IN THIS ISSUE

Bolan, M.; (Nippissing L)
Breaugh, M.; Chairman (Oshawa NDP)
MacDonald, D. C. (York South NDP)
Scrivener, M. (St. David PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Witnesses:
MacLean, L. A., Counsel for Members of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)

Assisting the committee:
Kellock, B. H., Counsel for the Committee

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Procedural Affairs Committee
Proceedings against Member for
Huron-Middlesex (Mr. Riddell)

Second Session, 31st Parliament
Monday, June 19, 1978

Speaker: Honourable John E. Stokes
Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

MONDAY, JUNE 19, 1978

The committee met at 11:02 a.m.

PROCEEDINGS AGAINST MEMBER FOR HURON-MIDDLESEX (MR. RIDDELL)

Mr. Chairman: You may recall at the last meeting of the committee we decided to order the business in the following way: Mr. Bullbrook will be invited to provide a final submission on his part today. Mr. MacLean will be invited to do likewise tomorrow. I believe it was agreed that Mr. Bullbrook, if he chose to, would be allowed a short period for rebuttal at the end of Mr. MacLean's summation tomorrow and, subsequent to that, the committee will order its business in its own time, depending mostly on whether or not our counsel can provide us with at least a draft summation of the committee's work.

We have a quorum and we will proceed.

Mr. Bolan: I realize that we have a quorum. However, in view of the fact summations are being made, would the Chairman consider waiting five minutes to see if someone from the other side will appear?

I just put it out to—

Mr. Chairman: Well, there you are. Mrs. Scrivener has obliged us.

Mr. Bullbrook, would you proceed?

Mr. Bullbrook: I have prepared and circulated a written submission on behalf of the member. One of the problems I have is others have asked for copies; I made 15 thinking that would be sufficient and I have now run out of copies.

I regard this matter to be extremely technical from a legal point of view, and I think this is the first time it has come before the Legislature itself to make a decision on it. Therefore, from time to time I would like to either reinforce what I am saying or attempt an explanation through you to counsel, because counsel has an extremely onerous task in connection with this. By elaborating, I hope I would be able to get my point across perhaps better than I have done in the written text. It goes without saying, of course, that I am subject to interruption at any time by members to attempt an explanation.

This is a submission of Jack Riddell, MPP for Huron-Middlesex, to your committee.

Honourable madam and gentlemen, we believe the following to be a valid summary of the evidence, at least the relevant evidence, heard by this committee and relevant to the proceedings before this committee.

Jack Riddell is a member of the Legislative Assembly of the province of Ontario representing the riding of Huron-Middlesex. At all relevant times there was a legal strike carried on by Local 1620 of the International Union of United Automobile, Aerospace and Agricultural Implement Workers of America against the Fleck Manufacturing Company at the plant of Fleck in Huron Park in the riding of Huron-Middlesex represented by Mr. Riddell. On the evidence of Mr. Riddell, the following was his action relative to the strike.

Mr. Riddell was out of the country between March 2 and March 9, 1978 and did not learn that the Fleck workers were on strike until he returned home on March 9, 1978. He had received calls to his home and to his constituency office from workers at the Fleck plant registering with him various complaints.

On Monday, March 13, 1978, he went to Huron Park to talk to some of the striking workers on the picket line at the entrance to the park. He listened to their complaints which mainly seemed to centre on the fact that there were more police than picketers at the entrance to the park. In addition there were allegations made to him of police brutality.

His evidence is that he then proceeded to the plant as he had learned a number of workers had been crossing the picket line and going to work each day. He was met at the door of the factory by two men whom he did not know. He asked to see someone in management as he wanted permission to talk to workers inside the plant as well as to someone in management. One of the persons to whom he was speaking introduced himself to Riddell as Grant Turner, vice-president of Fleck. Mr. Riddell accompanied Mr. Turner to his office where they had considerable discussion.

According to the evidence of Mr. Riddell, this was the first time he had met Mr. Turner or any of the management of Fleck. The evidence of Mr. Riddell, however, is that his purpose in going to the plant and in talking to the workers was a result of inquiries made of him and his constituency secretary and that he had been advised also that many questions had been raised in the Legislature about the strike and about one James Fleck, whom Mr. Riddell did not know personally, and about the possible intervention of Mr. Fleck in the circumstances surrounding the strike and the police participation.

It was thereafter he went into the plant to talk to the non-striking workers and his evidence was that he was told of various circumstances involving threats, misrepresentation, and intimidation with respect to persons joining the union and from the persons who so joined the union and with whom he spoke at that time.

The evidence of Mr. Riddell is that he returned to the Legislature on Monday, March 13, 1978, and asked a question in the House as to the strike. Such question is recorded in Hansard and available to the committee if they would wish to peruse it. Mr. Riddell was called out of the House after question period for an interview and subjected to questions by the media. As a result of questioning, an article appeared in the Globe and Mail to which the United Auto Workers and others took offence.

On Tuesday, March 14, 1978, an additional incident took place at the Fleck plant and the Fleck plant was closed down. Mr. Riddell's constituency office was deluged with calls from the non-striking workers who wanted to keep the plant open. His constituency secretary made a note of their comments and advised him that they requested he go to the plant on Friday, March 17, 1978. He did so and at noon hour met the non-striking workers. in the plant during lunch hour.

In addition to the query of the news media previously referred to David Schatzky, of the program Metro Morning, telephoned Mr. Riddell for an interview, which was given.

The evidence of John McNamee, a student-at-law of the firm of Messrs. MacLean and Chercover, is that on Thursday, March 16, 1978, he delivered a notice of action pursuant to the Libel and Slander Act, RSO 1970, chapter 243, on behalf of the plaintiffs named therein and against Jack Riddell, as defendant, by delivering same to the secretary of Jack Riddell at his legislative office in the Main Legislative Building, Room 122 NW. The evidence of Mr. McNamee is that he was not aware of section 38 of the Legislative Assembly Act, RSO 1970, chapter 240, at the time of the service.

The evidence of Lennox MacLean is, essentially, that he was instructed by the persons named in the notice of action to take such action. In addition, he was instructed by the United Auto Workers to launch an application to the Ontario Labour Relations Board for a consent to institute a prosecution against inter alia Jack Riddell and that he was effecting it on Thursday, March 16, 1978. The evidence of Mr. MacLean is that he was not aware of section 38 of the Legislative Assembly Act but that he was aware of a claim of privilege that could be made by a member of Parliament.

It is the submission of the member, Jack Riddell, that the balance of the evidence relevant to the proceedings before this committee relates to the service of documents relating to each action upon him or his solicitor and to the correspondence and attendances that Mr. Riddell has been involved with in connection with both proceedings. A list of the correspondence is attached hereto as exhibit A and the evidence of Riddell and his solicitor substantiates the attendances by and with Riddell or by and with his solicitor. It is not actually physically attached. It will be made available to you, as requested by Mrs. Scrivener at the last hearing.

The relevant statute—my proof reading. I have just been fired; "relevant" is misspelled in the submission. The Legislative Assembly Act, RSO 1970, chapter 240, section 37: "A member of the assembly is not liable to any civil action or prosecution, arrest, imprisonment or damages, by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or said by him before the assembly or a committee thereof." And section 38: "Except for a contravention of this act, a member of the assembly is not liable to arrest, detention or molestation for any cause or matter whatever of a civil nature during a session of the Legislature or during the 20 days preceding or 20 days following a session."

The member, Riddell, has relied upon both sections in connection with the proceedings taken against him. It is submitted by the member, Riddell, that is open to him to argue that in the circumstances, physical and otherwise, the privilege afforded under section 37 might well be available to him with respect to such proceedings. However, on the basis of the terms of reference and on the basis of the desire by the member, Riddell, to define his position under section

38, neither he or his counsel have attempted to adduce evidence before this committee which would lead them to rely upon section 37.

The law applicable to the extension of the privilege envisaged under section 37 is not directly related to section 38 and based on complementary privilege of members of the Houses of Parliament of the United Kingdom and the House of Commons of Canada. In addition, for the purpose of these proceedings before the committee, the member, Riddell, is not relying upon the privilege claimed for comments made in the assembly or a committee thereof. The basic claim of privilege by the member, Riddell, is based upon the wording of and what he submits to be the clear intention of section 38 of the act.

If I might digress for a moment, what I am attempting to do there, Mr. Kellock, is define for you that although in the libel and slander action, and before the labour relations board, it might well be argued by Riddell, if required, that the actual physical location of the media scrum was in what would normally be called the confines of the assembly, and that certain case law available to Riddell at that time could be argued that he could claim the privilege of section 37 but that he's not doing so in this context at this time.

The Parliamentary Privilege Act (10 George III, chapter 50), as contained in sections 37 and 38, evolved through practice over centuries. The origin and scope of the privilege and its evolution and restriction is available to members in chapter seven of the 19th edition of Erskine May, Parliamentary Practice. Suffice it to say that the privilege extended within the intention of the present section 37 has not to any great extent been restricted. On the contrary, there is case law which has broadened the privilege therein extended in circumstances where the offending words or deeds were outside the traditional known confines of the parliamentary assembly or its committee.

By reason of the comments made above, it is not necessary for the member, Riddell, to dwell upon such extension before this honourable committee. However, the traditional privilege intended by section 38 and enjoyed without restriction prior to 1770 was at that time seriously confined. Prior to 1770, the members of the Houses of Parliament of the United Kingdom enjoyed the privilege of not being subject to actions or suits of a civil nature commenced and prosecuted. Section 2 of the Parliamentary Privilege Act, 1770, reads as follows: "Provided, nevertheless, that nothing in this act shall extend to subject the person of any of the knights, citizens and burgesses, or the commissioners of shires and burghs of the House of Commons of Great Britain for the time being, to be arrested or imprisoned upon any such suit or proceedings."

[11:15]

In fact the House of Commons, in its wisdom, in 1770 removed from itself and its members the privilege of not being subject to civil statute or civil action during the time specified in the act. It did retain the privilege that its members should not be subject to arrest or imprisonment. It is my respectful submission that it was the intention of the House of Commons in 1770 to retain its isolation from arrest and imprisonment on the basis of the long-established understanding of why privilege existed.

It is the submission of the member, Riddell, that the privilege under section 37 of the Legislative Assembly Act exists by reason of the clear intention and understanding that members of the assembly should in no way be fettered or restricted in their absolute entitlement to say that which they wish before the assembly or in any of its committees.

If I might digress—subject of course to the rules of the Speaker of the House.

It is the submission of the member, Riddell, that the intention of the privilege envisaged in section 38 and in the House of Commons of the United Kingdom prior to 1770 was that a member during session or within the time prescribed should be able to devote himself to his parliamentary duties exclusive of the possibility of being fettered by civil proceedings or arrest and imprisonment. The members of the Houses of Parliament of the United Kingdom in 1770 decided to remove from themselves the impossibility of being fettered in carrying out their parliamentary obligation by civil suit. They did not remove the privilege relating to arrest and imprisonment.

It is interesting to note further that members of Parliament in Canada in their wisdom chose to subject themselves only to the privileges, immunities and powers enjoyed and exercised by the Commons of the United Kingdom (see section 18 of the Parliament of Canada Act, 1975, 38-39 Victoria, chapter 38).

It is submitted by the member, Riddell, that if the Legislature of Ontario intended to restrict itself solely to the rights and privileges enjoyed by members of the House of Commons of the United Kingdom after 1770,

all it had to do was adopt the same position as was adopted by the House of Commons in being satisfied with the provisions of the Parliament of Canada Act, 1875. Instead, in 1876 the Legislative Assembly of Ontario enacted in substantially the same words the provisions of the present day section 38. The member, Riddell, submits that we have to attribute to his or your predecessors in office sufficient intelligence to know two things: 1. The privileges that the House of Commons in Ottawa had satisfied themselves with one year previously; 2. The extension obviously contained in their privilege section 38 over and above the wording of the Parliamentary Privilege Act of 1770.

What is that extension? It is "or molestation for any cause or matter whatever of a civil nature." It is difficult for the member, Riddell, to visualize the use of words more broad in their connotation than the words used by your predecessors. First, he directs your attention to the words "any cause or matter." He asks you to note that your act does not say "any action, suit or proceeding." Each one of the words "action, suit or proceeding" does have a connotation in law and deals with litigation properly understood and constituted.

Even if my friend Mr. MacLean wishes to argue that the notice of action in the libel and slander matter is not the commencement of an action, the member, Riddell, says it does not have to be. The act clearly states "any cause or matter." The act goes further and adds the word "whatever." It is the submission of the member, Riddell, that it is almost an impossibility to draft a section with words any wider in their scope or more all-embracing in their capture—that is the words "any cause or matter of a civil nature whatever."

To attempt to equate the privilege in the United Kingdom today, the privilege in Ottawa today and the privilege afforded to you as principals of this assembly is, in the submission of your colleague Riddell, patently wrong. To do so is to disregard the wording of your own statute.

The member, Riddell, wants to deal now with what basically has to be the essence of the decision you must make: 1. What is meant by the words "of a civil nature"; and 2. What is meant by the word "molestation"?

I would like to deal first with the words "of a civil nature," as the result of the service upon him of the notice of action in the libel and slander matter. He states to you hopefully, not in an arrogant fashion, that there is little to be said with respect to these proceedings. Can there be any doubt in anyone's mind that the service of that document upon him and the service of other documents upon him and his solicitor and the necessary undertakings by his solicitor and the necessary correspondence by him and his solicitor were matters of a civil nature? I am suggesting, I hope not arrogantly, that the libel and slander matters were clearly civil, that they had no criminal nor quasi-criminal connotations.

The more interesting and admittedly testing question is whether the application for consent to prosecute under the Labour Relations Act was a matter of a civil nature. Riddell's counsel asked for an adjournment at this stage by the honourable committee for the purpose of going to the divisional court of the province of Ontario to seek out judicial assistance on the question of the nature of the proceedings before the Ontario Labour Relations Board. The committee felt, with justification, that since the Parliament of Ontario was the highest tribunal it was not bound by any decision of the divisional court and that, although no law on the point was available, it would make its own decision. However, the committee now has before it the decision of the Ontario Labour Relations Board dealing with the question of privilege as claimed before such board.

The member, Riddell, might well say to himself that since the committee did not wish the benefit of any judicial interpretation by the highest court in the province, it would pay no attention to the decision of a board whose purpose is mainly administrative and whose expertise, respectfully, can hardly be regarded as judicial. The member, Riddell, recognizes, however, it might be foolhardy for him to take such an attitude. It is submitted by the member, Riddell, that the essential ingredients of the decision of the Ontario Labour Relations Board itself dealt with the questions of nature of the proceedings and what constituted a molestation. Your colleague Riddell wishes to deal firstly with the board's decision in relation to whether its proceedings are quasi-criminal, criminal or civil.

Paragraph 31 of the decision of the Ontario Labour Relations Board deals with the nature of the proceedings under section 90 of the Labour Relations Act.

I presume that members understand the procedure there. If I might say, succinctly, outside my text: basically, before you can prosecute for what is commonly called unfair labour practices, you must get the consent of the board to prosecute. It is the proceedings

before the board with respect to the consent to prosecute that Mr. Riddell is now involved with. Respectfully, we must direct our attention to the nature of those proceedings.

Without offending the learned chairman it is submitted that he was extremely selective in his choice of authorities for coming to the conclusion that consent to prosecute were proceedings of a quasi-criminal nature. It is to be noted that Hydro-Electric Power Commission of Ontario, 1964 OLRB reports, April 35, and A. L. Watson Limited, 1965 OLRB report, September 436, are endorsed by the chairman as supportive of an ultimate definition that the proceedings are quasi-criminal. Mr. Riddell submits that there are a multitude of decisions of the Ontario Labour Relations Board that come to a contrary conclusion and that are, in effect, truly more indicative of what the nature of the proceedings are.

I ask that committee counsel and the committee understand the significance of the word "nature"; that is extremely important because what we are dealing with is the word nature in your statute—not the form of them but the nature of the proceedings.

The thread of interpretation as to the nature of these proceedings was first spun by the eminent chairman of the Ontario Labour Relations Board, Mr. Jacob Finkleman, in the case of Savage Shoes Limited and United Packing House Workers of America, 1953 CLLC 1457. At page 1459, Mr. Finkleman states as follows: "Prosecution under the Labour Relations Act should not be a manifestation of retributive justice. Its sole purpose should be to further the ends which the act was designed to serve." In the decision of Mr. Picher, he does not deal with the argument put forward by counsel for Riddell as to the purpose and intent of section 90. Section 90 is an intermediate step requiring a hearing before the board before proceedings quasi-criminal in form are commenced.

Again I ask you to see that I am using the words "quasi-criminal in form are commenced." As was argued before Mr. Picher once the information had been laid against Mr. Riddell, then perhaps the proceedings before a provincial judge might not only be proceedings in form of a quasi-criminal nature, but might also be proceedings in substance of a quasi-criminal nature. I would argue on Mr. Riddell's behalf that on the basis of the law even those proceedings are really civil in nature.

If I might digress, I'm saying, in effect, even after they decide whether there should be a prosecution, it is arguable, by Mr. Riddell in the context of your statute that even those proceedings are civil.

I ask you to invite your committee counsel to look at the words of Dickson J. on behalf of himself and the remainder of the Supreme Court of Canada in the decision Regina versus Sault Ste. Marie, as yet unreported, given by such court on May 1, 1978, when he says, as follows: "Although enforced as penal laws through the utilization of the machinery of the criminal law, the offences—public interest or social good, provincial statutes—are in substance of a civil nature and might well be regarded as a breach of administrative law to which traditional principles of criminal law have but limited application."

If I might digress, for more than a moment: that case deals with a breach of a pollution statute. It's an extremely lengthy decision, dealing with the categorizing of offences, where you also have a vicarious liability on behalf of, for example, a corporation for its employee. What's interesting about it is the synthesis of the Supreme Court of Canada in looking at the onus of proof required in three categories of penal provincial statute. What's interesting mainly is the very wording at the beginning of the decision where Mr. Justice Dickson, concurred in by the entire Supreme Court of Canada, says that provincial statutes although penal in form are, in effect, civil in nature.

I ask you to consider that Mr. Justice Dickson, of course, knew nothing about what we're dealing with today, but he used the very word, "nature," the very word in your statute. I think that's a most interesting decision from the point of view of almost a general understanding by the Supreme Court of Canada, that cases of this nature, of this kind —statutes of this kind. I'm sorry—are civil in nature. It's a most interesting evaluation of what constitutes the substance of a statute or a prosecution or an action as opposed to the form of it.

Now, the court comes to the conclusion that the form is of no consequence, and the reason I regard that case as extremely important is that when you read Mr. Picher's decision, he's overcome with the fact that it's penal, that there can be a penalty at the end. He's overcome with the form of it, that eventually after you get the consent, you lay an information. I say to you that the court says those aren't the things you look at at all. The Supreme Court of Canada says you look at the substance of the statute itself and what it is attempting to do. And I say that the Labour Relations Act is attempting to administer labour relations in Ontario. I go

on, frankly, to point out to you that that's the real purpose of the intermediate step of getting a consent.

Back to the text, Mr. Chairman, I say to you, madam and gentlemen, that a court worthy of exercising the judicial function looks at the substance of a matter to interpret its nature and not just its form. However, I ask you to recall that I have suggested that even after the laying of the information and after the proceedings required under section 90, the matter would still be civil in nature. Mr. Riddell doesn't have to go that far. We're talking now about the nature of the proceedings required by the statute prior to the laying of the information.

Mr. Finkleman understood totally the reason for the intermediate step. Normally, when there is a breach of the criminal law or of quasi-criminal statutes, the person adversely affected has direct and immediate recourse to justice through the laying of an information or the preferring of an indictment. The Legislature of Ontario said, in effect, that in labour relations matters you cannot lay such information until the board has decided whether the interests of collective bargaining and labour relations in general would be benefited by the laying of the information.

That is what Mr. Finkleman meant when he said, "Prosecution should not be a manifestation of retributive justice. Its sole purpose should be to further the ends which the act was designed to serve." The whole purpose of the Labour Relations Act is to administer labour relations in Ontario. The decision to be made by the board in assessing whether prosecution should be permitted is based not solely on whether there has been a breach of the statute but on the general question as to whether labour relations in Ontario are best served by the commencement of a prosecution. That is what Mr. Finkleman says and that is what the purpose of section 90 is.

[11:30]

It is noteworthy that the Savage Shoe case is adopted and elaborated upon by the board in subsequent decisions. See: Arthur G. McKee and Company Limited versus R. Armstrong et al, OLRB, October 21, 1976, report page 637. This is an interesting review of the issue.

Communication Workers of Canada versus AAS Telecommunications Limited and Zipcall Limited, OLRB, December, 1976, page 760.

Watts and Henderson Limited versus Howard et al, OLRB report, May, 1970, page 220.

Hydro Electric Commission, 1972, OLRB report page 575.

The above cases are cited for your consideration supporting the proposition that the hearing under section 90 is civil in nature. These cases are decisions of the Ontario Labour Relations Board and directly stand for an absolute contradiction of the principles set forth in the cases of the Ontario Labour Relations Board adopted by Mr. Picher in his decision. I can only say, madam and gentlemen, that I am not aware of an appeal from any of the cases that I have cited to you to a higher authority which changed the principles I have enunciated. I want to clarify there that we have reviewed as exhaustively as we could, through the Ontario reports, the possibility of appeal in connection with those cases. I can't find it. There might, however, have been one that I am not aware of.

If I might pass on, the only decision of the divisional court cited by the chairman in his written reasons is the Dorothea Knitting Mills case. I do not mean to be offensive, but I ask you to have your committee counsel read such case and advise you as to whether such case stands for the principle that certification proceedings before the board are not civil in nature. The Dorothea Knitting Mills case stands for the proposition that certification proceedings before the board are not a suit or an action.

If I might digress, Mr. Kellock, what was concerning the divisional court in the Dorothea Knitting Mills case—and you probably are aware of it—was whether a member of the board was compellable in a civil suit. The decision of the divisional court was that they were compellable in proceedings before the board because those proceedings were not a suit. They say it wasn't a suit, and they didn't have to deal with the question of whether it was civil or not. There is not even obiter in such case of which I am aware, from the division court, saying that the matter is civil or quasi-criminal or criminal. The bottom line of the Dorothea Knitting Mills case is whether it was a suit or action, is for you to decide in your wisdom and on the advice of your counsel whether these authorities cited by the board are representative of the law and opinion of the board.

I now wish to turn to the question of what constitutes a molestation. It is interesting to note that the chairman, in writing his decision, relied upon cases from 1780 on for a definition of modern usage of molestation.

If I might just digress again, the majority of the case law in connection with molestation emanates to a great extent from domestic matters. And molestation has been relied upon

in the courts with respect to domestic matters dealing with matters of physical force.

In paragraph 26 of his decision, he refers to cases involving threats, harassment and actual physical abuse of members, and concludes from such cases that for there to exist a molestation there should be something in the nature of a threat or harassment, or physical abuse. All the cases cited deal with the privileges of members of the Houses of the United Kingdom after passage of the Parliamentary Privilege Act of 1770. I ask you to recall that the essence of Mr. Riddell's argument is that the Legislative Assembly Act has not fettered you as the Parliamentary Privilege Act fettered the English Parliament. The cases cited by the chairman deal with a statute purposely denuded because of the history of what constituted molestation. I refer you again, through your counsel, to Erskine May.

Prior to the enactment of the Parliamentary Privileges Act of 1770 there evolved a scope of privilege beginning with harassment, intimidation and abuse and refining itself into a direct understanding that molestation included civil proceedings. The fact that molestation included freedom from civil proceedings was the very reason for the enactment of the Parliamentary Privilege Act of 1770. I want to confess to you, madam and gentlemen, that this is the essence of Mr. Riddell's argument before you.

The origin and scope of parliamentary privilege developed so that molestation included the commencement of civil proceedings during session. The Parliament of the United Kingdom in 1770 specifically negated immunity from such molestation. The Legislature of Ontario in 1876 specifically included the word "molestation," the word which in the tradition of parliamentary privilege included civil proceedings.

Mr. Kellock, page 13 therein contains, if I may, the pith and substance of Mr. Riddell's position. In addition, it is worthy of note that Mr. Picher, in assessing what molestation meant, disregarded the most fundamental, trite and axiomatic rules in the interpretation of statutes. To ascertain what a word means in a statute, the first place you look is in the statute itself to see if the word is used therein elsewhere. See The Construction of Statutes by E. D. Driedger, Canadian Legal Manual Series, page two and elsewhere.

The former Deputy Minister of Justice of Canada deals with the fundamental principles of construction in a concise fashion—that is, construction of statutes. Mr. Picher decided in his wisdom that it was of no benefit to him or the board to look at the statute to attempt to see what molestation means. I ask you to consider, through the advice of your counsel, the following: Mr. Picher would have you believe, subject to my further comments, that for a molestation to exist there has to be some type of physical force, intimidation or harassment. It is noteworthy that section 45(1) of the Legislative Assembly Act relates to matters which could bring a citizen before the assembly for a breach of privilege or a contempt.

If I may digress again, basically the Legislature of Ontario, as all parliaments—I shouldn't say all, but the ones I'm aware of in our country—has the right to constitute itself as a court of record. Under section 45, they can do so and actually bring a citizen before the bar of the House. Such has not been done and I trust won't ever have to be done. If I may make a personal comment, that type of resolution of problems should only be done under most extreme circumstances. But it is there, and it's interesting to note the wording, Mr. Kellock, of the subsections of 45(1). As I say, when you interpret a statute if you are looking at a word and you're attempting to find out what it means, one of the cardinal rules is to look elsewhere in the statute to see if it's used again. It's noteworthy that the word "molestation" is used in section 38 and then it's used in section 45(1)(11).

What takes place, in effect, is that 45(1)(11) permits the Legislature to bring a person before it on the basis of the wording therein contained for, amongst other things, molestation. Section 45(1)(2) refers to obstructing, threatening or attempting to force or intimidate a member of the assembly. I submit to you that if molestation means obstruction or threatening or the use of force or of intimidation and nothing else, then what is the purpose of section 45(1)(2)? It would be redundancy of the most ridiculous kind. Molestation means something different than section 45(1)(2). I submit it means what it grew to mean in the development of parliamentary privilege.

If I might digress, I'm saying in effect that if Mr. Picher is right, that molestation has to be a physical force, an intimidation, an harassment—if I may digress within the digression, you might even come to a conclusion that what's going on with Mr. Riddell is an intimidation. We're not arguing that. But I'm suggesting in effect that if molestation means that type of harassment force, what is the purpose of subsection 2? In

effect, you've got subsection 11 saying that you can bring a person before the assembly for molestation and you've got subsection 2 saying you can also bring them before the assembly for intimidation or harassment. Subsection 2 is not needed if that's what molestation means. I submit to you that your predecessor said any cause or matter whatever of a civil nature taken against a member was a molestation, an interference with your duty. I refer you to the text of Mr. Driedger on page 74 thereof and ask you to have your counsel guide you through the principles of consistency of meaning in relation to molestation under section 38 and under section 45, subsection 1(11). The doctrine of consistency of meaning will be explained to you by Mr. Kellock at the appropriate time.

One final comment in connection with the decision of the Ontario Labour Relations Board and, in particular, paragraph 27 of the decision. Mr. Picher says therein that a vexatious or frivolous action might constitute a breach of privilege. Again, most respectfully, I submit that it is difficult for Mr. Riddell to visualize himself caught up in a more catch-22 situation. The chairman is saying that if the action is vexatious or frivolous, then the privilege may be claimed. The only way to ascertain if the action is vexatious or frivolous is by joining in the litigation via motion or through trial, ascertaining on the merits of the case whether it was frivolous or vexatious.

Therefore, if we are to apply the logic of paragraph 27, the member of the Legislature must involve himself in the litigation to claim the privilege that he doesn't have to be involved in the litigation. In effect, Mr. Riddell must undertake the defence of both these proceedings, prove they were frivolous or vexatious, and then say, happily: "I don't have to be involved with these proceedings." The fact of the matter is, madam and gentlemen, whether the proceedings are frivolous or vexatious or bona fide is of no consequence to the very intention of claiming privilege. You claim privilege while the House is in session on the basis that you assert that the statute says you are not to be interfered with in your parliamentary duty in the time prescribed. I see nothing in the Legislative Assembly Act even remotely supportive of the assertion relative to frivolous or vexatious.

Relative to the decision of Mr. Picher and, in particular, paragraphs 28 and 29 thereof, the chairman in this part of his decision asks us to pause and forget section 38 and asks us whether there would be available to Mr. Riddell, irrespective of section 38, a claim of privilege under section 52. He concludes that the answer is no, based on Kielley versus Carson (1842) 4 Moore reports at 64. Mr. Picher can rightly refer to the decision of the Privy Council as the highest judicial authority, as it then was, as it no longer is, and which by analogy has something to do with what we're doing here. We happen to to be a sovereign nation now.

My disagreement with him, however, is that the case cited stands not for the principle with which he is involved. It is noteworthy that the Privy Council is dealing with the privileges of a member of the House of Assembly in Newfoundland in 1842. This case, in my respectful submission, stands for the principle that a member of a Legislature can enjoy no privileges greater than the privileges enjoyed by members of the British Parliament unless such Legislature has the constitutional power to grant itself other privileges. In 1842, the Legislature of Newfoundland had no sovereign powers whatever: it was a colony. I entirely agree that in 1842 the members of the Legislature of Newfoundland enjoyed no more privilege than those at Westminster.

The decision in Kielley and Carson begs the very question that we are about. The British North America Act of 1867 clearly provided that the House of Parliament for Canada could enact legislation with its constitutional purview as therein set forth. It also provided that the assemblies of the various provinces could enact legislation within the constitutional purview of the act. I trust it is not to be argued that it's outside the constitutional jurisdiction of the Legislature of Ontario to define its own privileges. In effect, as I have said previously, the House of Commons adopted the privileges of Westminster. The Legislature of Ontario did not do so.

One of the understandably significant concerns of every one involved in the process of assessing the existing privileges of members of the assembly of Ontario has been the gnawing question of whether the privilege claimed of freedom from matters of a civil nature during session would deprive a citizen of his or her rights. The dichotomy of a limitation period coupled with the privilege claimed resulting in such deprivation is understandably a concern to all including the member, Riddell.

[11:45]

If I may digress from my text, I have certain things to say about this; but it has

been, and quite understandably, an extremely deep concern. Mr. Kellock, I believe, will advise you that when this section first came into being—up to the 1930s—limitation periods normally ran seven years, 10 years; so that the conflict between privileges claimed and limitation periods of a short nature really never came to the fore. They came to the fore in the Riddell case; that is where they have come to the fore.

I am saying to you in effect it might well be that you, on the advice of your counsel, will have to come to a conclusion as to, if there is a dichotomy, what has to be done in changing the law. It might be, after this is finished, that you might come to the conclusion that Riddell is right: there was a privilege, but we don't like the privilege; so we are going to change the privilege. You might do that. You might say there is a privilege, we think the privilege should exist, but we should not deprive anyone of their right with respect to it. You might want to change that law.

I wish to submit the following for your consideration. The obligation of this committee is to decide what the law is, not what it would like the law to be. This committee and the assembly, however, unlike the courts, can decide what the law is and if they agree with Mr. Bumble that "the law is a ass," they can do something about it. If you find a deprivation might occur, then it is suggested respectfully that you assert by an amendment to the statute that limitation periods commence only after the time prescribed in your statute.

I want to reinforce totally that the member, Riddell, wishes to deprive no one of his day in court. In giving evidence to you, we are quite prepared to deal with these matters on the merits and substance. However, I am going to suggest to you that such an amendment is not necessary. I am going to suggest to you that on the law no one's rights are abrogated or voided. However, happily, I believe that the law is such that the citizen would not be deprived through the limitation period of later commencing an action and seeking the remedy against a member. I believe the law to be that the limitation period would commence after the termination of the prescription period in section 38. (See J. S. Williams, "Limitations of Actions in Canada," Canada Legal Manual Series and, in particular, page 195 and forward.)

I understand the law to be that where there is a legal disability occurring at the outset of the normal commencement period of the limitation, such disability will be effective to postpone the operation of the period for the time specified in the statute. I believe that really Mr. Bumble was not correct. The law is not an exact science but centuries of refinement through judicial decision have led it to come to grips with injustices and inequity, and that is what it has done here. But if, for one moment, you are concerned that it has not, then again I say how fortunate you are to be the ones who can assure it be done.

The member, Riddell, asks from you solely a proper interpretation of section 38. What flows from such proper interpretation will be the decision of your committee and your colleagues in the assembly.

All of which is respectfully submitted, Jack Riddell, MPP, Huron-Middlesex, by his counsel, James E. Bullbrook, QC.

Mr. Chairman, if I might be permitted to make a few additional comments irrespective of the text:

I want to say first, if I may presume to say, I recognize that this committee wishes to report to the House as quickly as possible. I have found this to be not only interesting but also one of the most technical matters that I have dealt with in several years. I am going to presume to suggest that to have your counsel decide what the law is after hearing myself and Mr. MacLean, I imagine at greater length, would be an onus unbearable for counsel. It is just tremendously complex. I would ask you to consider, nothwithstanding the tremendous limitations of your time, that counsel be given an opportunity to evaluate exhaustively the merits of arguments on both sides and then only, in concurrence with yourselves, that a recommendation be made to the House.

I want to also apologize to you for something. I have concurrent matters that I just have to handle. I just cannot do anything about it; so I am not going to be here to listen to Mr. MacLean. In not being here, I do not mean to offend Mr. MacLean, the chairman or members of the committee. But the fact is that I have to be back in another tribunal tomorrow.

I won't be replying to Mr. MacLean. I have put forward the position for my client. I can't think of anything—if I have erred in law and Mr. MacLean finds that I have erred in law as to citations or lack of appeals or appeals that I am not aware of, then your counsel will remedy that by pointing out to you what has, in effect, gone on. Basically, Mr. Riddell's case is put in that written submission. I am most appreciative of the opportunity to appear before you.

I have one last final presumptuous comment. Somewhere along the line the committees of the Legislature in matters where they must exercise a judicial function have a regard to the understanding under the Statutory Powers Procedure Act that every citizen in this country has the opportunity to have counsel involved directly in proceedings affecting his liberty and property.

Surely the Legislature of itself, carrying forward that tradition enunciated by McRuer, must develop a system of rules where adversary proceedings not only place a burden upon counsel for the committee but place a burden directly upon counsel for the participants. Thank you very much, sir.

Mr. Chairman: I will now entertain final questions from members of the committee.

Mr. Kellock: Mr. Bullbrook, I am just going through my notes which will follow the order of your written submission. The first question is fairly inconsequential, but I thought we agreed that Mr. Riddell's office was room 121, northwest, and not 122.

Mr. Bullbrook: If we agreed to that, then I certainly recognize whatever our agreement is. I am sorry. We will change that to the appropriate room. Probably I was taking it from material I had available to me.

Mr. Kellock: At the top of page five, Mr. Bullbrook, you give the citation of the Parliamentary Privilege Act (10 George III). Is that the 1770 statute or an earlier or a later one?

Mr. Bullbrook: I believe that is the 1770 one. That is my understanding.

Mr. Kellock: The second sentence on that page begins: "The Parliamentary Privilege Act"—and the citation follows—"as contained in section 37 and section 38." I didn't quite follow the use of the phrase—

Mr. Bullbrook: I am saying in effect that the privilege of saying whatever you wish in the House under section 37 was contained therein also.

Mr. Kellock: Thank you. Then at the bottom of page six and the top of page seven you point out that the predecessor of the present Legislative Assembly Act was first enacted in 1876 in Ontario. You indicate it would have been open to the Legislative Assembly of Ontario to have done the same thing that the House of Commons did, and that was to confer upon themselves the privileges enjoyed by their counterparts in Westminister.

I am instructed, subject to your comment, that shortly after Confederation, in the late 1860s, that is exactly what this House did. If that bill was disallowed by the Governor General for reasons which I have not been able to ascertain—

Mr. Bullbrook: I must confess that I was not familiar with that. That is an interesting point, if that is what they did. They decided to go along with Ottawa. Then I guess when they drafted their statute they didn't go along with Ottawa.

Mr. Kellock: I am not suggesting the disallowance has any value as a precedent—

Mr. Bullbrook: I wasn't familiar with that, Mr. Kellock.

Mr. Kellock: With respect to the whole question, Mr. Bullbrook, as to whether or not proceedings to enforce the "penal" provisions of a provincial statute—let's leave the Labour Relations Act aside and talk about the Highway Traffic Act or any other provincial statute—I take it that the debate in many of the cases as to whether a proceeding is civil or not, or criminal or not, has a lot to do with the fact that in this country legislative jurisdiction on a constitutional basis is broken down and distinguished as to whether it is criminal or not.

Would you agree or not agree that that debate is not particularly relevant for the purposes of determining whether section 38 is to apply?

Mr. Bullbrook: I agree.

Mr. Kellock: Would you agree that in the United Kingdom at the present time it would appear that regulatory offences, which are not generally regarded as criminal per se, have been included in the exception from the privilege?

Mr. Bullbrook: Yes. If I might—or should I make a comment now?

Mr. Kellock: I will ask you the next question, which will give you the opportunity.

Upon what basis is a tribunal attempting to decide whether the proceeding in connection with which an arrest occurs is civil or not? What test is to be applied?

Mr. Bullbrook: I couldn't possibly do it myself the way that Dickson did it in Regina versus Sault Ste. Marie. What he says there, in effect, is that you must look at the substance and nature of the provincial legislation. As I read Dickson, in Regina versus Sault Ste. Marie, Dickson would come to the conclusion that an offence under the Highway Traffic Act is quasi-criminal, but an offence under the Environmental Assessment Act, the Labour Relations Act—matters of that nature that deal with a general public good, not of a specific penal nature—are, in effect, matters administrative in their general scope. That is

the essence of Regina versus Sault Ste. Marie.

What he does then is characterize. He says, for example, that the Legislature of Ontario can create what should be generally accepted as quasi-criminal statutes and, therefore, create an onus on the part of the crown with respect to mens rea and reasonable doubt by dealing directly with words such as "wilfully," "knowingly" and words of that nature that adopt a form but relate a substance similar to the Criminal Code.

In the Sault Ste. Marie case, by way of example—this is a bit of a digression—he eventually came to a conclusion that there were three classes of vicarious liability situations under the provincial statutes. One is where the Legislature had clearly intended that mens rea be an essential ingredient and that for a successful prosecution proof must have to flow beyond a reasonable doubt.

The second was the strict liability situation where he talked about a balance of probabilities; and I am going to say to you, as you read the labour relations cases in coming to a conclusion as to whether consent should go or not, some of them talk about balance of probabilities.

Mr. Kellock: I am having a little difficulty with your reliance on the Sault Ste. Marie case. As I understand it, the issue to be decided there was whether or not a mistake of fact was to be taken to be a defence in certain regulatory offences.

Mr. Bullbrook: I wanted to make that clear. That is why I digressed. I am not using Regina versus Sault Ste. Marie as an authority for the proposition that all penal provincial statutes are quasi-criminal, or that they are all civil. I am using it for an authority to say that you must look at the substance and intent of the statute, whether it is administrative in its purview, in coming to a conclusion as to whether it is civil in nature or quasi-criminal in nature. I am saying the Sault Ste. Marie case stands for that and I'm saying in effect that the Labour Relations Act clearly is an administrative statute coupling Finkleman's understanding together with the words of Dickson.

[12:00]

Mr. Kellock: Let us take a federal regulatory statute that is perceived to have its legislative foundation not in the criminal law power, I'm going to say in the trade and commerce power, fisheries power, would you then say that we can find in the federal realm civil proceedings?

Mr. Bullbrook: If you follow the argument of Dickson, although he relates to penal provincial statutes, I think I must say yes to you, Mr. Kellock. I think I've got to say to you that the federal government was establishing, in effect, what was an administrative agency within the constitutional purview. The fact that it was federal or provincial is of no consequence.

Mr. Kellock: Just one question—I doubt that it's very important: On page 11, at the top, you make the statement in your written submission that "when there is a breach of the criminal law or of quasi-criminal statutes, the person adversely affected has direct and immediate recourse to justice through the laying of an information or the preferring of an indictment." I take it you would agree with me that the criminal law is not designed to effect redress for the individual but rather for the state?

Mr. Bullbrook: It is. That's extremely important and I'm glad you brought that point up. It relates to a matter that was argued before Mr. Picher. I argued there that basically things of a criminal nature, or even a quasi-criminal nature, were situations where the state in effect was saying, "On your behalf, because of an offence affecting you but society in general, we will lay an information or prefer an indictment against an accused person." What's interesting under the Labour Relations Act, if you look at the section, Mr. Kellock, is the state never lays the information. After the intermediate step is over, sir—do you follow me?—and the chairman says, "Yes, you have a consent to prosecute," the person who must lay the information is the individual, or individuals, not the state.

Mr. Kellock: The proceedings nonetheless would be carried on in the name of the Queen upon the relation of whatever—

Mr. Bullbrook: Oh yes, no doubt about that, and I say there, if I may, that is the form of the prosecution and that's what Dickson was dealing with in the question of substance and form.

Mr. Kellock: And is there not also a discretion in the justice of the peace to refuse to take the information?

Mr. Bullbrook: There certainly is. There are two things involved in that. First of all, one lays an information or perfers an indictment at his own hazard, in my opinion, without the approval of the crown attorney in the circumstances. That lays him open to other actions. But secondly, you're quite right that perhaps my wording there, Mr. Kellock, should be much refined when I said he can move immediately. Would I be correct in saying that in one case in 10,000—well, how can one say that? I say in the majority of circumstances you lay the information di-

rectly, there is no intermediate step, but Mr. Kellock is quite right, that a justice of the peace has a discretionary power not to lay the information.

Mr. Kellock: I was interested in your submissions based on section 45 of the statute, and I think if I'm correct, your point here is that 45, subsection 1, paragraph 2, uses words like "obstruct" and "threaten" and that for that reason the word "molestation" in subparagraph 11 must have a somewhat broader meaning than "obstruct, threaten or attempt to force or intimidate a member." Am I correct so far?

Mr. Bullbrook: Yes, I ended up with the words "a different meaning." The reason I did that, and I'm not getting into semantics, but my student and I, in researching and dealing with this case, my student said that molestation must mean more than intimidation. I said it must mean less. Do you follow the gradation of thought there? I said it must mean less. He said, "Well, molestation must mean more than intimidation" et cetera. He meant must be larger, broader, and I said: "No, it means less. It doesn't have to be as effective." So I used the words in the brief, "different from."

Mr. Kellock: Mr. Picher, in the decision of the labour relations board in paragraph 26, gives some examples, as you point out—for example, sending insulting letters to members relating to their actions in Parliament has been held to be a molestation. Would that kind of activity come within paragraph 45, 1(2)?

Mr. Bullbrook: I think it would. I think it would be regarded as an intimidation to some extent, but if you'll bear with me I'll try to answer these questions. I must say, that I wouldn't want to argue today what a specific thing is as to vis-à-vis whether it's a harassment, an intimidation, or a molestation. What I'm saying, in effect, is, that a molestation is something less than an intimidation and a harassment, or something different from.

Mr. Kellock: You didn't raise the point directly, except by referring to the decision of the Privy Council in the Kielley and Carson case; are you familiar with the decision of the Supreme Court of Canada in Landers and Woodworth?

Mr. Bullbrook: I am not.

Mr. Kellock: You're not?

Mr. Bullbrook: I'm not.

Mr. Kellock: Would you say, Mr. Bullbrook, that there—

Mrs. Scrivener: Can you give us the name of that case?

Mr. Kellock: Landers, L-a-n-d-e-r-s.

Mr. Bullbrook: Do you have the citation of that? I'd like to have a look at it; it's obviously important and I've left it out.

Mr. Kellock: Landers against Woodworth, 1877, II Supreme Court of Canada reports, 158.

Mr. Bullbrook: Thank you.

Mr. Kellock: It refers to Kielley and Carson.

Mr. Bullbrook: I must confess that I read Kielley and Carson since it had been referred to by Mr. Picher. I didn't follow forward, Mr. Kellock, with any decisions that distinguished Kielley and Carson. I was myself attempting to distinguish Kielley and Carson from the case that Mr. Picher was deciding.

Mr. Kellock: I just want to ask two questions that zero in on what you call the pith and substance of your submission.

Mr. Bullbrook: Yes.

Mr. Kellock: What is your position, Mr. Bullbrook, as to whether or not there exists in Ontario today, privileges of this House and the members of it, that are not defined in the Legislative Assembly Act?

Mr. Bullbrook: I think you'd have to go to section—oh, I'm sorry, that are not defined.

Mr. Kellock: In other words, what is the meaning of section 52 of the Legislative Assembly Act?

Mr. Bullbrook: Yes, I'm sorry, I was going to answer your question by the question you were giving me, I was going to say that you've got to go to section 52. Well I would think, in effect, that you have to look at the common law.

Mr. Kellock: And so your position is—I can't give you the Latin phrase—the law of Parliament is part of the common law. It exists in Ontario apart from any specific statute conferring privileges on the members of this House.

Mr. Bullbrook: Yes, I adopt the position, rightly or wrongly, that in interpreting what the law is, as it applies to citizens of our country, in the absence of clear, unequivocal definition, or in the absence of statutory authority to the contrary, courts and tribunals are entitled to look at the common law of England, as they are entitled to look at the law of other common law jurisdictions.

Mr. Kellock: If that is so, does that part of the common law include the pre-1770 position in England; and if so, why should you say it does?

Mr. Bullbrook: I would think it would include the pre-1770 position, because it's absolutely essential when you read May, under the heading of the origin and scope of parliamentary privilege, to understand the refinement of what those privileges came to be known, including molestation. You must interpret the intention of the Parliament of the United Kingdom in 1770. What were they trying to do, in effect?

I attempted in my brief to say the following: that in 1770, they removed from themselves the immunity from civil proceedings. It would have been foolish to consider that they would remove the immunity from civil proceedings, if they didn't have the immunity from civil proceedings to begin with. So what I'm saying in effect is that molestation, as it became to be known, included civil proceedings, and so it's essential that in interpreting the intention of the Parliament in 1770, one has to look at the privileges of the members prior to 1770.

As I've attempted to say in my brief, and as I characterized as the pith and substance of the argument, if, in effect, they removed from themselves that immunity in 1770, which grew to be known as a result of the scope of words such as molestation, that if the Legislature of Ontario purposely put the word in—I think you'd agree with me, Mr. Kellock, that we must presume that when a legislative body puts in a word, they do it for a purpose, they don't slip it in haphazardly—that they put in the word molestation, they did so for a purpose.

Mr. Kellock: I gave that, and the real question is what purpose?

Mr. Bullbrook: That's it exactly.

Mr. Kellock: It's my understanding, subject to your comments, that the privilege against arrest and molestation is still very much alive in England.

Mr. Bullbrook: Arrest and imprisonment?

Mr. Kellock: Arrest and molestation.

Mr. Bullbrook: Arrest and molestation.

Mr. Kellock: It's a well-known privilege at the present time?

Mr. Bullbrook: Yes.

Mr. Kellock: And what troubles me is, looking back to 1876 or whenever the first statute was enacted, we have to ascertain what the intention of the Legislature at that time was. Why do you say that that statute would have, by using a phrase that was then and is now recognized in England, imported a broader privilege than the privilege that existed at the time the statute was enacted?

Mr. Bullbrook: I'm not sure I follow that. Could you ask it again for me please?

Mrs. Scrivener: And at the same time could you say whether or not Hansard records were kept in the provincial House at that time?

Mr. Bullbrook: They weren't in 1876.

Mr. MacDonald: I'm told by an authority that the Globe was the Hansard of the day.

Mr. Kellock: Assuming that the original ancient privilege which provided immunity from civil suits was part of the broader privilege against molestation, and that was removed in England in 1770, my question is, to what do we look to determine that in 1876 in Ontario, the members of this House, by the use of that phrase, which had a meaning at the time in England, would have intended to provide a broader privilege than the privilege embraced by the phrase in common usage at that time?

Mr. Bullbrook: I think we have to look at whether the word "molestation" at that time included the commencement of civil proceedings, and since it was specifically negated, that in effect you have the Legislature of Ontario coupling the word "molestation" with the key words "of a civil nature."

Now if they weren't talking about civil proceedings, it's difficult for me to think of what they meant when they said, "any cause or matter of a civil nature." If they use a traditional word saying we're not subject to molestation, but then they go on and they say what kind of molestation; they say, "any cause or matter whatever of a civil nature." So that it must mean something different from harassment and intimidation. Aside from my section 45 argument, Mr. Kellock—we'll throw that aside for a moment—it must have meant something having to do with the immunity of a member from any cause or matter of a civil nature.

[12:15]

I say to you in effect that you're quite correct in having to look to the traditional understanding of the word "molestation," but I ask you to do so in the context of not depriving yourself of the obligation to look at the broad words of any cause or matter whatever of a civil nature. If they didn't mean civil proceedings, then I wonder what they did mean. They didn't mean assault; they couldn't have meant that. They didn't mean intimidation; they couldn't have meant that. They didn't mean harassment; they couldn't have meant that. They meant anything of a civil nature whatever.

Mr. Kellock: One more question, possibly two. You did not direct any of your submis-

sion to the geographical location of the service.

Mr. Bullbrook: No, I didn't. I didn't, purposely.

Mr. Kellock: Can the committee take it then that that is not to be investigated at least so far as Mr. Riddell is concerned?

Mr. Bullbrook: The committee is certainly at liberty to investigate it and will be guided by you. Frankly, I didn't want to befog the issue of section 37. Section 37 has to be argued—

Mr. Kellock: I'm sorry; I'm not talking about section 37—

Mr. Bullbrook: Oh, I'm sorry.

Mr. Kellock: I'm talking about the service of what we'll loosely call civil process within the precincts of the House.

Mr. Bullbrook: Basically, you had brought up, and Mr. MacLean had brought up, the lack of gazetting, for example. I didn't deal with that. The reason I didn't deal with it, although the service of the documents in the assembly itself is the most overt manifestation of a breach of the privilege, it isn't, in my respectful submission, the essential aspect of what it's all about. It's not the going to a member and serving him with a civil document at that time; that might well be a breach of the privilege, and it's well open to the members to decide so.

If my argument has any validity, what it's based upon is the intention of the statute: that a member not be constantly involved with litigation while he is a member. That's the problem that a member faces and that I thought the Legislature was trying to come to grips with. I say frankly, by not dealing with the service, I don't in any way minimize the importance of a person serving a member in the confines, be they the confines or not, of the assembly. I think it's extremely important. I don't in any way detract from the attitude of some members who justifiably find that offensive. But if I'm to put forward what Riddell feels, I've got to say it isn't just the service on me that I'm talking about, madam and gentlemen; it's the whole proceedings that I'm enveloped in while I'm trying to be a member.

Mr. Kellock: Thank you, Mr. Chairman. Those are my questions.

Mrs. Scrivener: Mr. Chairman, I just have one question to Mr. Bullbrook. He has just made the comment about the service of papers and of litigation. If one equates molestation with litigation of that nature under section 38 of the act, does he consider that it's entirely possible that such molestation, i.e., service of papers and litigation during a member's tenure and service in the Legislature—could be a form of harassment which could become a political tool? Theoretically, could one serve papers on the members of a party and tie them up with service of papers and litigation during a session so that their work would suffer?

Mr. Bullbrook: I must say that I had never regarded it as a political tool. I suppose it could be—

Mrs. Scrivener: No, could it become? That's my question.

Mr. Bullbrook: I suppose it could. I don't think there's any evidence that it has been in this case.

Mrs. Scrivener: No.

Mr. Bullbrook: Also, I wouldn't want to really have to deal with the question of whether it is an intimidation; it could well be an intimidation. What I'm saying, however, is that it's open to abuse of a member during the course of the session. The key ingredient as far as recommendations are concerned, if I may presume to say that, has to be the coming to grips in a report to the Legislature with the consequences that flow from the existing privileges. It might well be that the Legislature would say to itself: "This question of privilege is archaic. Let's do away with it entirely." You might then stand in the House and say: "But if you do away with it, you open yourself to this very type of thing we're trying to avoid." Whatever the committee does, it's going to have to have a very wise approach to the matter.

Mrs. Scrivener: One other thing, in terms of intimidation Mr. Riddell indicated to this committee that he felt inhibited about further actions and discussions with employees of Fleck Manufacturing as a result of the numbers of papers and so on he had been served, whether by design or by natural result. Would you consider that there has been some intimidation of him as a result of this service?

Mr. Bullbrook: He gave evidence to that effect and I specifically didn't deal with it. The reason I didn't was very selfish on my part. The question of motivation in this whole matter has clouded—

Mrs. Scrivener: I didn't ask you about motivation.

Mr. Bullbrook: I'm sorry, his intention afterwards.

Mrs. Scrivener: No, do you consider that he has suffered intimidation?

Mr. Bullbrook: I'm not certain that I can answer that question. I can only refer to his evidence, Mrs. Scrivener. May I just elaborate for a moment?

Mrs. Scrivener: Certainly.

Mr. Bullbrook: I've attempted purposely, in the brief, in dealing with the facts, not to deal with the extremely contentious matter of the Fleck strike and what Riddell said. That becomes inflammatory and, in effect, makes you divert yourself and digress from the essential issue of privilege. As a result, whether he felt intimidated or not, is not included in this brief. In answer to a question, he gave that evidence, that he did. He felt he didn't want to deal with it further. But I felt if I said that, then Mr. MacLean will come back and talk about strike-busting and talk about the terrible things that went on in the Fleck situation. I just felt, frankly, that I wanted to avoid any dealing with that.

Mrs. Scrivener: I'm sorry, I didn't really mean to equate the question with the actions at the plant. The result of the action of the service of papers and that kind of concern and worry to him is at the breach of his privilege. Did that also then have the effect of intimidating him in his conduct?

Mr. Bullbrook: Mrs. Scrivener, you're entitled to a direct answer from me and I'm sorry that I didn't give you one before. My recollection of the evidence is that Riddell told you that in effect he was loath to deal with the Fleck matter after he began to be involved with these proceedings. I believe that to be his evidence.

Mr. MacDonald: Mr. Bullbrook, in the initial part of your summation in which you are dealing with the facts, there are two or three of what seem to me to be facts which you haven't included. I was just curious to know why. For example, is it not a fact, upon which the libel and slander suit was based, and which has never been denied by Mr. Riddell, that he made statements to the effect that the union had been certified through intimidation, deceit and things of that nature in gathering the cards? Is that not a fact?

Mr. Bullbrook: I thought in answering Mrs. Scrivener, I had attempted to do that. The fact of what he said is of no consequence in this. In the context of my arguments as to the question of privilege, I am not getting into the question of the libel suit. I'm dealing solely with the law. I am saying it's a fact that he went there and some people told him that. I'm saying that afterwards he talked to the press, an article was published and the UAW took offence with it. What he said at the time might justify the libel suit; it might, I don't believe it does. And because this is a public hearing, I have got to say it is intended to defend it on the basis of justification and information. What I am saying, as far as this hearing is concerned, is whether what he said was right or wrong is of no consequence.

Now I did not overtly leave that out, if you want to put that in as a fact; and, aside from that, you will notice out of 18 pages I use a page and three quarters on facts. I must say that when you look at the statement of facts that relate to the establishment of this committee, that statement of facts pretty well covers the facts that are relevant. If you will note: Mr. Kellock, when he opened the examination of every witness, he dealt solely with the questions of fact relating to how this committee got going.

Mr. Kellock never said: "Well, did you say that, Mr. Riddell?" To exaggerate, for the sake of clarity: supposing Mr. Riddell had said it and nobody else had said it to him; supposing he just completely fabricated these words that he used without any substance. Then that becomes an extremely important question for a jury to decide in the libel and slander action.

Mr. MacDonald: Forgive me for interrupting.

Mr. Bullbrook: Yes, surely.

Mr. MacDonald: But surely this whole matter is before us because of an alleged violation of the rights and privileges of a member. And the violation of the rights and privileges of a member arose from the fact that he made statements which were deemed by certain citizens to be defamatory, and therefore they took action. So surely it is a relevant fact here.

Mr. Bullbrook: Well if you want to, Mr. MacDonald, you put any facts you want. I have not attempted to restrict the facts as a result of some nefarious intent on my part. The problem that you've got, if you follow your logic, it's again a Catch 22 situation. If you're going to decide the question of privilege on the merits of whether Riddell should be able to claim privilege because what he said was meritorious or not meritorious, then you've got to come to some kind of judgement as to whether what he said was appropriate in the circumstances.

Mr. MacDonald: But the question that I'm trying to come to grips with, and it's the key

question—and there are others that I want to follow in trying to clarify it in my mind with you, if I may—is whether or not a member of the Legislature has the right to challenge, defy, violate laws of the province.

Mr. Bullbrook: The strangest thing is that section 37 gives him absolutely that right, subject to the rulings of the House. The question of the merit of what a member says is of no consequence, because strangely enough we continue to give members of Parliament immunity for things they say in the House; and I think, subject to the normal interpretation of the rules, he can say whatever he wants to.

Mr. MacDonald: Ah yes, but he didn't say it in the House. And interestingly enough, when the Solicitor General (Mr. Kerr) said it in the House he immediately retracted it.

Mr. Bullbrook: That's a question, of course, of a retraction required by an offending word under the rules of the House. That's where retractions come from; they don't come from a question of privilege.

May I say this—and I'm certainly subject to examination by Mr. MacDonald—I want to say this, Mr. Chairman, which might help: if there are facts to be put in there that you can say are of probative value and relevant that I haven't put in, they'll certainly either be put in by Mr. MacLean or by yourselves. I can only say there's no purpose in leaving out any facts, Mr. MacDonald.

Mr. MacDonald: I'm just submitting—and you can comment on it as you wish after I have made my submission—that this is a very relevant fact. The fact of the matter is that that union had been certified by the responsible body in the province of Ontario. They had examined all the cards; they had come to the conclusion that those cards hadn't been solicited by intimidation, deceit and so on, and therefore they certified the union; it was a legal union. What in effect, Mr. Riddell was doing was challenging the legality of the union, and in effect superseding the judgement of the labour relations board. My great puzzlement in all this—you have stated your case—is that surely an MPP is not a supercitizen who can go around challenging the laws of the province and be immune in so doing.

[12:30]

Mr. Bullbrook: I can only say to you, Mr. MacDonald, that I totally and unequivocally disagree with you when you say he was challenging the ruling of the Ontario Labour Relations Board.

Mr. MacDonald: He said the union had been certified through intimidation and deceit and so on. The labour relations board responsibility is to examine cards and come to the conclusion whether they had been solicited and gained voluntarily.

Mr. Bullbrook: Mr. MacDonald, you draw me into something that I don't want to be drawn into. You draw me into the libel and slander action.

Mr. MacDonald: But the privilege relates to the libel and slander action.

Mr. Bullbrook: What happens here is the following. You draw me into the fact that in those files are 13 written statements from people who are members of the union saying: "I was forced to sign for the following reasons." I have those here. I am not going to disclose them. They will be disclosed by the viva voce evidence of those witnesses.

Perhaps Mr. Kellock would help me. I am not trying to extricate myself from this, but does it have any relevance at all to the privilege claim? It might colour the feeling of a member in making a decision. I can't stop that and I don't intend to stop it. If a member has come to a conclusion, based on the factual situation, I can only say I regret that he did so. I hope he comes to a conclusion on the basis of the law as enunciated by counsel in the context of the facts that he considers relevant.

Mrs. Scrivener: It seems to me this matter was referred to us by the Speaker under section 38 of the Act. Mr. MacDonald's point really raises section 37. I have no objection to broadening the scope of the examination of the committee if that is the wish of the committee, but it seems to me we had agreed at a much earlier meeting to deal with section 38.

Mr. MacDonald: Mr. Chairman, if I may speak to that, I am not broadening it to section 37.

Mrs. Scrivener: You are.

Mr. MacDonald: What we are dealing with here is an alleged violation of the privileges. While I don't want to get into the merits of it, as that will be decided in the courts, the whole allegation of the violation of his privileges was because some citizens deemed their rights to have been violated and they have launched a suit.

Mr. Bullbrook: I say to you, sir, Mr. Riddell is not trying to deprive them of their right to launch the suit. If I may, that is what I said at the end of the statement. If I am wrong in my understanding of limitations, then I have invited you to remedy the dicho-

tomy of the coupling of the limitation. I am trying to do this.

I couldn't possibly ever consider coming here and saying Mr. Riddell claimed a privilege and, therefore, deprived anybody. I am not saying that. This is the first time you have come to grips with what flows from the claiming of a privilege. I ask you not to colour it with the substance of the action.

Mr. MacDonald: May I come back to that in a moment? Before I leave the section dealing with facts, again I am rather puzzled, when you have given your explanation as to why you didn't include it, as to the fact Mr. Riddell's office was not legally under the jurisdiction of the Speaker and, therefore, there was no violation of his rights in giving notice of it.

Mr. Bullbrook: I was going to come to grips with it and decided not to. I thought that was one point where I couldn't really help you to any great extent. Your counsel is going to have to come to grips with that thing.

As you well recognize in my response, whether it was legally within the sanctuary of the Parliament or not is not of any great consequence, if my argument holds truth, because I am not saying the service itself constituted a breach of privilege. I am saying in effect that the proceedings commenced constitutes a breach of privilege.

Mr. MacDonald: I noted with interest on page 17 when you were talking about the assembly in section 38, and whether or not it is appropriate and whether or not we would want to have it changed in light of our whole review of this experience, you say what the law is and not what you would like the law to be. What that law is at the moment is that the order in council was neither tabled in the Legislature nor was it gazetted and therefore it is not the law.

Mr. Bullbrook: You tell me that it is not the law. My problem is, and I say this most respectfully, I can't cite the opinion of Donald MacDonald to the committee as to what the law is. I must say I don't know the application of that; I am confessing that. I am not sure whether that does in effect mean the whole assembly and its environs is not within the jurisdiction of the Speaker—

Mr. MacDonald: Not the assembly itself; nobody is questioning that the assembly falls under the Speaker's control. But what I am asserting is that since the order in council was not finalized through tabling in the Legislature and gazetting in the Ontario Gazette, it did not become the law, and therefore the members' offices were not legally brought within the ambit of the Speaker's control.

However, let me turn to another question. In the concluding portion of your statement you make a novel assertion: that the time for the statute of limitations in the proceedings for which Mr. Riddell was given notice would not begin from the commitment of the alleged libel and slander, as stated in the statute, but rather, it would begin only after the privileged time spelled out in the Legislative Assembly Act had elapsed. It would become operative from, I suppose, 20 days after the—

Mr. Bullbrook: On the 21st day.

Mr. MacDonald: On the 21st day after the Legislature—

Mr. Bullbrook: I am quoting right from Williams here, but I'm also saying the following, as any lawyer has to: I'm saying this is what Williams says; he talks about the corollary, but it might be that that isn't the law. What I'm saying—

Mrs. Scrivener: Is there a reason for that opinion?

Mr. Bullbrook: It's not an opinion; it is part of a text on limitations in a series readily available. On page 195 and forward he deals in effect with the question of the freezing of the limitation period. Now, your counsel is going to look at it and he is going to say one of two things. "Based on Williams and his authorities, Mr. Bullbrook is absolutely wrong." However, let's start with "Mr. Bullbrook is right," okay?

Mr. MacDonald: It's the safer premise.

Mr. Bullbrook: He starts by saying "Mr. Bullbrook is right." Then people, such as honourable members here, are tremendously relieved, because honourable members have been very concerned about the freezing of a citizen's rights. If Bullbrook is right, the honourable member says, "Oh, that relieves me greatly."

But if counsel says, "Bullbrook is wrong, in my opinion," what Bullbrook has said here on behalf of Riddell is, if he is wrong, change it; don't deprive the citizen of his rights. The purpose of this committee is to digest the question of what constitutes a privilege for the first time in the history of this assembly. I'm saying to you on behalf of the member, Riddell, if you've come to a conclusion that Bullbrook is wrong, and if that dichotomy exists, then it goes without saying, I presume to say to you on Riddell's behalf, "Don't deprive the citizen of his right."

Mr. MacDonald: That's a safe position for you to take, because—

Mr. Bullbrook: But I don't take positions because they are safe; I take positions because they are reasonable.

Mr. MacDonald: But, Mr. Bullbrook, the law of the province surely is what is operative, not what is written in some text. I've even been involved in the preparation of a text on the government and politics of Ontario, and I would hate to think anybody would think that in any sense would be a guidance as to what the law is. The Legislative Assembly Act doesn't state that the statute of limitations becomes effective from the 21st day after the Legislature lifts; nor do any of these acts state that, in the instance where there has been an offence against the act by an MPP, there is this postponement of the statute. So that this text surely is irrelevant.

I come to the conclusion as a layman that Bullbrook is wrong and, whatever we may do in the future, on the basis of the law now, Bullbrook is wrong, because the law now, in accordance with your interpretation, is depriving citizens of their rights.

Mr. Bullbrook: Then if I am proven to be wrong, you have the happy circumstance of not only having some validity to your almost essential feeling that I'm wrong, but you can also do something about it. However, if I may, I have got to say something as a lawyer in responding to you. What you're doing, in effect, is saying, "Here is a statute that prescribes a limitation period. Here is a statute that prescribes"—if I'm correct—"that they couldn't commence the action." And you're saying, "Since they're so manifestly mutually exclusive, then this is my opinion." The problem, and I think Mr. Kellock will support me, is that you constantly face dichotomies of statutes. That's what the courts are all about.

Mr. MacDonald: But this is a fairly massive dichotomy that you should deprive—

Mr. Bullbrook: The degree of dichotomy is of no consequence. The problem that faces the courts—and, frankly, except for the punitive aspect of the courts, to a great extent there really would be no civil litigation if the courts weren't constantly involving themselves in the interpretation of statutes—sometimes the interpretation of statutes that not only create a dichotomy but create an absolute, irreconcilable difference. You have statutes that have a difference. I'm quoting Williams for you to guide counsel as best I can in some beginning point to decide this very testy question.

Mr. MacDonald: As a layman I've always felt I had to operate on the basis that you live within the laws that now exist, not on somebody's textbook interpretation of the law. The laws that now exist would be ludicrous, would be an ass, if they deprived all citizens of their rights and made an MPP a supercitizen who could go around violating those rights with immunity.

Mr. Bullbrook: I must say in deference to people such as Driedger and Williams and Falconbridge and others who write texts, they don't write texts on the basis of saying what the law is. They write text saying, "This is what we understand the law to be, on the basis of the following cases."

Mr. MacDonald: I wonder if they dealt with this kind of situation.

Mr. Bullbrook: Nobody has ever dealt with this matter before.

Mr. Bolan: You're the first, Don.

Mr. Bullbrook: This is the first time. In any event, that's in the brief—

Mr. MacDonald: Let me get an understanding so that I'm absolutely certain I'm correct. Your interpretation of the term "molestation" is such a broad one that, in effect, any action by any citizen to protect his rights when they have been violated is an infringement of the MPP's rights.

Mr. Bullbrook: No, it's got to be civil in nature.

Mr. MacDonald: It's got to be civil in nature?

Mr. Bullbrook: Yes. It says, "any cause or matter whatever of a civil nature."

Mr. MacDonald: That gets us off into the argument as to whether this is form and substance and at what point it becomes quasi-criminal and therefore to what point doesn't come under section 38.

Mr. Bullbrook: Quite right.

Mr. MacDonald: Are you familiar with the Ziemba case that was held?

Mr. Bullbrook: I am, yes.

Mr. MacDonald: I was rather interested in the Ziemba case, which is not the same as this, except that it was examining whether or not an MPP had the right to withhold his sources of information outside. I was rather interested in the presentation that was made to the courts by the Liberal Party, through Jim Breithaupt. He, after going through all of the cases, at the end comes to precisely the opposite conclusion with regard to an MPP.

Mr. Bullbrook: Was he dealing with a civil matter?

Mr. MacDonald: Yes.

Mr. Bullbrook: He was dealing with a civil matter, was he?

Mr. MacDonald: Withholding your rights? Well, he goes through civil and he goes through criminal—

Mr. Bolan: That was a criminal matter.

Mr. MacDonald: —but his summation on page eight of his presentation to the court is: "It is a well established rule that a member of the Legislative Assembly is like an ordinary citizen when he is outside the Legislature."

Mr. Bullbrook: He was dealing with the fact, if I may analogize, that Donald MacDonald can't assault a person tomorrow. He was dealing, in effect, with not only a quasi-criminal matter; he was, as the member for Nipissing said, dealing with the question of whether he was in contempt of a court, and he was clearly dealing in a criminal matter outside the purview of the contempt.

[12:45]

I would adopt unequivocally the wording of Mr. Breithaupt. The member of the Legislature is just as subject as any other citizen to the normal directions of the state. Mr. Kellock almost completely encapsulated the distinction. The real distinction is that where the state, on behalf of society, must take remedial action the member is subject to that, just the same as anybody else.

Mr. MacDonald: But one interpretation of molestation is that you can at least give notice of taking action even on a civil case as long as it doesn't involve arrest and incarceration.

Mr. Bullbrook: We're going to now deal with six pages, I take it, of my brief, in connection of what we submit molestation to be. But molestation can't be read in isolation. Molestation has to be read in the context of the other words: "any cause or matter whatever of a civil nature."

Mr. MacDonald: I acknowledge that; I recognize this is your interpretation of it; I think there may be other interpretations. Thank you, Mr. Chairman.

Mr. Chairman: Are there any further questions? Thank you. Mr. Bullbrook.

Tomorrow morning each of the caucuses has normally scheduled a caucus meeting. Is it the desire of the committee to sit tomorrow morning or tomorrow afternoon?

Mr. MacDonald: I thought we decided last week, Mr. Chairman, that we wanted to at least get the final summations through so that our counsel can begin to consider this. Whatever may arise in my caucus, I am willing to give higher priority to this tomorrow. I don't know if Mr. Grande is so willing.

Mr. Chairman: My concern is that I want to see a quorum and I'd be prepared to call the meeting for 10 tomorrow morning, if I have some assurance that I can see a quorum at that time. Mr. Sterling, will you be here?

Mr. Sterling: I would prefer if we could start at 9 tomorrow, Mr. Chairman.

Mr. Chairman: I'm concerned about two things, frankly: one is, this is not the type of matter which actually lends itself to coming in and going out. There is that concern that I want to find the time when the members can free themselves to sit and to hear the summation as we did this morning. That's important, so frankly I don't want people dropping in for half an hour and then going off to a caucus meeting for an hour and coming back later.

Mr. MacLean indicated last week that he would need perhaps something like three to four hours. Mr. Bullbrook, we thank you for your summation this morning. That was rather succinct and to the point. Mr. MacLean indicated that he would like to develop his argument at some greater length than that—

Mr. MacDonald: Mr. Chairman, I have no objection to starting at 9 but I don't know if that would really meet Mr. Sterling's point, because if it's going to be three or four hours, that means you go to 12 or 1. In fact, maybe starting at 9 is wise, so that if it goes to four hours it means we can get it done by 1.

Mr. Chairman: It's unlikely that your chairman will be here at 9 unless the Don Valley Parkway completely disappears in the morning. The last time I got up that early I milked eight cows. Didn't like the experience.

Mr. MacDonald: We all have sacrifices to make.

Mr. Chairman: Of course, if I was the minister, I'd have the helicopter pick me up and drop me down here. The canal doesn't work that way.

All right, we will start the meeting tomorrow at 10 and I will look for a quorum.

The committee adjourned at 1 p.m.

SPEAKERS IN THIS ISSUE

Bolan, M. (Nipissing L)
Breaugh, M.; Chairman (Oshawa NDP)
MacDonald, D. C. (York South NDP)
Scrivener, M. (St. David PC)
Sterling, N. W. (Carleton-Grenville PC)

Assisting the committee:
Bullbrook, J. A., Counsel for J. K. Riddell, MPP (Huron-Middlesex)
Kellock, B. H., Counsel for the committee

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Procedural Affairs Committee
Proceedings against Member for
Huron-Middlesex (Mr. Riddell)

Second Session, 31st Parliament
Tuesday, June 20, 1978
Morning Sitting

Speaker: Honourable John E. Stokes
Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

TUESDAY, JUNE 20, 1978

The committee met at 10:14 a.m.

PROCEEDINGS AGAINST MEMBER FOR HURON-MIDDLESEX (MR. RIDDELL)

Mr. Chairman: The chair sees a quorum. We are ready to proceed this morning with Mr. MacLean making his final submission. We will use the same format as yesterday, attempting to give him full occasion to present his submission. At the end of that, we will take any question that might be entertained.

Mr. MacLean, would you proceed?

Mr. MacLean: If it pleases the committee, I would like to refer you to the brief I have placed before you. That brief is of some length, as you will notice. I will put you at ease, as I don't intend to go through and read all of it. I will leave some of it for you to read yourselves, but I intend to hit the highlights.

The brief was prepared sort of from hearing to hearing in this matter, not knowing when I would be called upon, so it is in somewhat of a composite form. You will see that the brief consists of some submissions on the facts in law. Then attached to the brief are some appendices. Appendix one, which is a notice of action, is at the back of it. Attached to that is exhibit A.

Mr. Chairman: Does each member of the committee have a copy of this brief?

Mr. MacLean: I started off with enough copies for the members of the committee. I hope there are enough. Sorry, Mr. Haggerty, I thought you had one.

[10:15]

Mr. Haggerty, if you look at the back of the document where you get by the long argument, you get to appendix one. Appendix one contains the notice of action. Appendix two is a letter of March 30 which was written to Mr. Riddell. Attached to that is the tape of the CBL interview which takes in the next three pages. Following that is a letter of April 5 directed to Mr. Bullbrook which is self-explanatory. Following that is a supplementary notice of action. Attached to that are excerpts from the London Free Press of March 14, the evening and the morning editions. I'm sorry, it's the evening of March 14, the morning of March 15 and the evening of March 15. Those are the newspaper articles that contained the defamations that were complained of by the intended plaintiffs in the action.

Then there's the letter of April 3, which is appendix four. That goes along with the application for consent to prosecute. That's self-explanatory. There is another letter of April 6 which also goes along with the application for consent to prosecute. Then you see the decision of the Ontario Labour Relations Board marked as appendix five. The reasons of the board are set out.

The next document, appendix six, is the application to institute prosecution brought under the Labour Relations Act. Following that there is a letter of April 10, 1978, addressed to Mr. Bullbrook. Then there is an excerpt from the Toronto Globe and Mail of May 16 dealing with a matter that was raised in Parliament in Ottawa, which I'm going to refer to in due course as something very close to the problem before you.

There is an excerpt from the Ottawa Citizen as the next document bearing on the same subject. In addition to that, I have placed copies of the Hansard for the Commons debates for May 2 and May 15, 1978, which go into detail into the claim of privilege made by Mr. Huntington in Parliament in Ottawa. I'll deal with that later in arguments. But the case, in passing, is very close, if not on all fours, with the case now before you and in which case you'll notice that the claim of privilege was rejected.

I'd say at the outset that parliamentary privilege, on the basis of the authorities both curial and parliamentary, has since about 1700 received a developing restrictive interpretation. It is fair to say on a perusal of the authorities that the approach to the interpretation and application of parliamentary privileges has been that they have been confined in their operation to a minimum infringement of the rights and liberties of the public.

This is the rule of construction which has been applied, has been held by the courts and by Parliament that privilege operates only to ensure that the assembly can perform its functions. The privilege must be essential—in other words, the performance of a func-

tion. If it is not, then the probability is that there is no such privilege.

I have in this brief quoted at considerable length from the authorities—from Erskine May on parliamentary privilege. I don't intend to read all those bodies to you, but I'll make some reference. Those authorities in my respectful submission support our defence to these proceedings that there has been no breach of parliamentary privilege. Indeed, in my submission, there is not a shadow of substance to the claim that there has been a breach of parliamentary privilege by the actions taken by my clients.

Mr. Chairman: Mr. MacLean, could I interrupt for just a moment?

Mr. MacLean: Yes, Mr. Chairman.

Mr. Chairman: I want to point out to you that there are no members of the government caucus present at the hearing at this time. I have bent over backwards to schedule this thing, and I want the record to show that there are three members absent from the committee to hear a final submission from one of the parties. It strikes me that is most unfair to the degree, Mr. MacLean, that I would offer you, if you so desire, the choice of whether you want to continue at this point or whether you would like the committee to adjourn until we see whether these members can be here.

I point that out for your consideration to be fair, because there are three members who will have a vote on whether or not this privilege was breached or not, and they are not here to hear a final submission from one of the parties. It is true that a Hansard is available and they will be provided with the documents, but I thought I should point that out to you and seek your advice. The committee may comment if they choose at this point too.

Mr. Bolan: I thought Mr. Sterling was here.

Mr. Chairman: He was at the beginning of the session this morning, but—

Mr. MacDonald: I chided him about his casual appearance, maybe he's gone for his coat. Yesterday he didn't like my shirt.

Mr. Chairman: However, I do think it is a serious matter that three members of the committee are not present to hear a final submission.

Mr. MacLean: I think it is too, Mr. Chairman, and I would prefer that they be here if they can be brought here. I think it's one thing hearing submissions; it's another thing reading them, particularly in the summer vacation.

Mr. Chairman: We're not sure they will read it. We will attempt to resurrect their bodies. It's your pleasure if you care to continue, or we could adjourn—

Mr. MacLean: I'll just wait a moment, Mr. Chairman, if it pleases the committee.

Mr. Chairman: I think it reasonable then that the committee will adjourn for five minutes.

The committee recessed at 10:24 a.m.

On resumption at 10:32 a.m.

Mr. MacLean: If it pleases the committee, Mr. Chairman, I will continue with my representations.

As I was saying prior to the recess, it's our submission that there has not been any case made out for violation of parliamentary privilege. Indeed, it's my submission that the claim of parliamentary privilege that has been asserted in these proceedings has been shown to be without any substance having regard to the authorities, both parliamentary and judicial.

The matter that is referred to the committee is set forth on the first page of my brief; it is, if I may just draw your attention to it, "that the matter of the service of documents pursuant to the Libel and Slander Act and the Labour Relations Act on the member for Huron-Middlesex, contrary to section 38 of the Legislative Assembly Act . . . stand referred to the standing committee on procedural affairs . . ." I needn't read the remainder of that, but let's look at some of the highlights of the facts in this case.

On or about Thursday, March 16, a notice of intent to bring a civil action for libel and slander pursuant to section 5 of that act, naming Jack Riddell as a proposed defendant, was delivered to Mr. Riddell's secretary at his office in the main legislative building. Section 5 of the Libel and Slander Act provides that no action for libel in a newspaper or in a broadcast applies unless the plaintiff has, within six weeks after the alleged libel has come to his attention, given to the defendant notice in writing specifying the matter complained of. A copy of the notice is attached and marked, as I said, appendix one to this proceeding.

I have advised your counsel, Mr. Kellock, that a writ has been issued. I have supplied Mr. Kellock with a copy of that writ, and I believe it is incumbent on me to bring that to the attention of the committee. That writ —it hasn't been served—was issued on June 14, 1978, and it reads: "The plaintiffs' claim is for damages against the defendant for libel and slander published by the defendant on

Tuesday, March 14, 1978; on Wednesday, March 15, 1978; on Friday, March 17, 1978; and on other occasions, in that he did state to the press and the news media and persons representing the press and news media defamatory and false statements of and concerning the plaintiffs which have caused, and continue to cause, damages to the plaintiffs personally and to the persons they represent.

"The plaintiffs' claim is for damages, actual, consequential and punitive, in respect of libellous and slanderous remarks made by the defendant which were intended to mean or imply, and would be interpreted to mean or imply, that the plaintiffs as officers and organizers of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) in Canada and Local 1620 in Ontario, used illegal, deceitful, fraudulent and intimidatory methods and means to obtain membership cards from employees employed by Fleck Manufacturing Company at Huron Park, Ontario, and that they fraudulently and illegally used these membership cards to obtain bargaining rights and certification for such employees from the Ontario Labour Relations Board. The said statements were also intended to mean and imply and would be interpreted to mean and imply that the plaintiffs as officers and organizers of the union used illegal threats and physical intimidation and illegal means to persuade the employees of the company to engage in a strike against Fleck Manufacturing Company and that the union was not a credible organization and did not, in fact, represent the interests of the employees or have their support.

"The said defamatory statements published by the defendant have interfered with and caused serious prejudice to the position of the union as the bargaining agent and has seriously interfered with collective bargaining between the union on behalf of the employees and management and have contributed substantially to the prolongation and continuation of the strike now in progress at the plant.

"The said defamatory publications made by the defendant were published as follows:

"In the evening edition of the London Free Press, on Tuesday, March 14, 1978;

"In the morning edition of the London Free Press, on Wednesday, March 15, 1978;

"In the evening edition of the London Free Press, on Wednesday, March 15, 1978; .

"In the Toronto Globe and Mail, on Wednesday, March 15, 1978;

"On radio station CBL (Toronto) on the morning of Wednesday, March 15, 1978;

"On television station CFPL (London) in the evening of Friday, March 17, 1978; and

"In newspapers and on radio and television stations at time and places not known to the plaintiffs at the present time, in the week of March 14, 1978, to March 21, 1978.

"Statements made by the defendant in the legislative chamber of the Ontario Legislature, and statements in respect of which the defendant may be otherwise privileged by virtue of the Legislative Assembly Act . . . as amended, are not the subject matter of any complaint by the plaintiffs, and no cause of action is asserted in respect thereof."

As I say, Mr. Chairman and members of the committee, that document has not been served; so that proceedings have not been taken in consequence of the document as yet. It has merely been issued, and you'll recall that I brought up to the committee, at one of the earlier meetings, our concern for the fact that the limitation period was rapidly expiring. This writ was isued on the eve of the termination of the limitation period. What has now transpired is that the notice of intent to bring an action has now materialized into the issuance of a writ. In my submission, it makes no difference, for purposes of our claim, to the propriety of that action; that action does not infringe parliamentary privilege.

Continuing on with the statement of facts, Mr. Chairman and members of the committee: In a letter dated March 30, 1978, addressed to Mr. Jack Riddell in his office at Queen's Park, the solicitors for the persons named as the intended plaintiffs in the notice given under the Libel and Slander Act sent Mr. Riddell a copy of a transcript of his remarks alleged to have been made by him in the notice to the CBL radio station on March 15, 1978. A copy of this letter and the enclosed transcript is attached and marked appendix two hereto.

In a letter dated April 5, 1978, the solicitors for the persons named as intended plaintiffs in the notice under the Libel and Slander Act, namely MacLean and Chercover, sent a supplementary notice of action to the solicitor for Mr. Riddell, Mr. James Bullbrook. This supplementary notice of action contained copies of newspaper articles printed in the London Free Press on March 14, 1978, and in the morning and evening editions of the same paper on March 15, 1978. The said letter of April 5, 1978, and supplementary notice of action with newspaper clippings referred to herein is attached as appendix three.

It is stated in a supplementary notice of action, as it was in the original, that: ". . . the defamatory words complained of relate to comments made by the said Jack Riddell

with regard to the actions of the plaintiffs, and other members of the UAW, incidental to the application for a certification certificate at Fleck Manufacturing Company Limited, Huron Park, Ontario, and with regard to the action of the plaintiffs, and other members of the UAW, in the course of a legal strike by the UAW against the said Fleck Manufacturing Company Limited."

The statements alleged to have been made by Mr. Riddell to radio station CBL and to the news media, and alleged to be defamatory of and concerning the plaintiffs named in the notice, included statements to the following effect and meaning:

The evidence of membership in the form of membership cards which the UAW had placed before the Ontario Labour Relations Board and on the basis of which they were certified by the board to represent the employees at Fleck were obtained by threats and devious means. In consequence, a large number of the employees for whom the UAW had been certified did not wish to be represented by this union. In effect, the UAW had perpetrated a fraud on the Ontario Labour Relations Board in obtaining its certification to represent the employees in question. A large number of the employees on strike were only on strike because they or their families had been threatened with physical violence. The majority of the workers are not supporting the strike and a lot of the workers did not want to join the union. In consequence, the UAW was not a credible organization and did not, in fact, represent the interests or the wishes of the employees and they should not support it.

That material comes from the newspaper clippings; I leave it to the members of the committee to read the matters in detail. But those constitute the allegations that were being made, or the statements that were being made against my clients.

Continuing on with the facts: On or about March 16, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), as applicants, filed an application with the Ontario Labour Relations Board for consent to institute a prosecution against Fleck Manufacturing Company, Bill McIntyre, Bill Freeth, Grant Turner, Jack Riddell and Ray Glover. As the committee is probably aware, the respondents McIntyre, Freeth and Glover are members of the Ontario Provincial Police force. Mr. Grant Turner is the vice-president of the company.

In the application for consent to prosecute, it is stated in paragraph 26 as follows:

"On or about the 14th and 15th of March, 1978, the respondent, Jack Riddell, a Liberal MPP, acting for and on behalf of the respondent company, advised the press for publication, and made false and inaccurate statements to the same effect, on the radio, as follows:

"That the applicant union had obtained its certification from the Ontario Labour Relations Board as the bargaining agent for the employees of the respondent company by threats, intimidation and deception, and that most of the employees had never wanted and did not want to belong to or be represented by the UAW. This statement was made with the intent to defame, discredit, undermine and thereby to interfere with the representation by the UAW of the employees in the bargaining unit and to further the company's union-busting tactics against the applicant union.

"Implicit in his said statements to the press and radio was the false and inaccurate accusation that the UAW had perpetrated deception and fraud upon the Ontario Labour Relations Board in order to obtain a certificate as the bargaining agent for the employees in question.

"He also stated or suggested that most of the employees in the bargaining unit were against the strike and were not participating in it, and they had 'flooded' his riding office with calls that they wanted to return to work or did not want the union."

It is alleged in paragraph 26 of the application for consent to prosecute, that the respondent, Jack Riddell, had, because of what he had stated, as referred to in paragraph 26 of the application, violated section 56 of the Labour Relations Act, by interfering with the representation by the UAW of the employees in the bargaining unit.

[10:45]

Further particulars and material facts concerning alleged improprieties on the part of the respondent, Jack Riddell, in addition to those set forth in paragraph 26 of the application for consent to prosecute, were sent to the board in letters from the union's solicitors —I referred you to these already—dated April 3 and 6. These letters are attached and marked appendix four. In these letters it is alleged that the respondent, Jack Riddell, had spoken to employees on the picket line and had told them that the respondent, Grant Turner, vice-president of the company, had asked him to speak to the picketers.

The purport of what he said to the picketers, as alleged in the letters, is to the effect that if they continued with the strike, the

plant would close down and they would be without a job. As indicated in the letter of April 6, he is alleged to have told the picketers that the UAW and the NDP were trying to shut the plant down and that he was trying to prevent it. There was also the implication from his remarks that the position taken by the company in terms of its low wage offer in the amount of $2.85 per hour was not unreasonable, having regard to the competition in the United States.

The application for consent to prosecute also involves allegations of unfair labour practices against Fleck Manufacturing Company for violations of sections 3, 14, 56, 58(c), 61, 70 and 85 of the Labour Relations Act and against the respondent, Grant Turner, for the same violations of the Labour Relations Act. In addition, the applicant alleges unfair labour practices against three members of the Ontario Provincial Police for acting in contraventions of sections 56 and 61. Section 61 is the intimidation section under the Labour Relations Act.

This application for consent to prosecute was mailed by the registrar of the Ontario Labour Relations Board to Mr. Riddell at his Queen's Park office in a letter from the Ontario Labour Relations Board, dated March 20, 1978.

In my submission it is important—I'm not reading from my brief at the moment—in examining the character of the proceedings and the complaint made against the respondent, Jack Riddell, in the application for consent to prosecute and in the notice of intent to bring the action for libel and slander, to look at that in the context of the timing of the remarks that he made, the timing of his visitation to the plant and what had transpired up until that time at the plant.

The facts and circumstances of that are set forth in the application for consent to prosecute. It is my submission, which I think has been affirmed by at least some members of the committee during the course of these proceedings, that the committee does not have a mandate and does not wish to embark upon a trial of the merits of the unfair labour practice proceedings or a trial of the libel and slander action. That's apart from the problem.

However, in approaching the problem and in approaching the question as to whether or not there has been a violation of parliamentary privilege, one has to look at the nature and character of the proceedings and, at the same time, at the nature and character of the conduct complained of in those proceedings. When one looks at the application for consent to prosecute—I'm not going to read it all—it appears that the union was certified as a collective bargaining agent for a bargaining unit of the employees at Fleck Manufacturing Company on October 20, 1977.

The union was certified outright on the basis that it had more than 55 per cent of the employees of the respondent as members in the bargaining unit at the time the application was made. The evidence was that there was in excess of 80 per cent. No challenges were made to the evidence of membership submitted by the union to the board for certification.

Following certification, the company and the union engaged in meetings. From the union's point of view those meetings were intended to result in the making of a collective agreement. Some nine meetings took place and are referred to in this application, but the negotiations broke off on or about Friday, March 3.

Coincidentally on that same day, meetings were held in the plant. Employees were summoned to attend meetings, and at one meeting in the morning two members of the Ontario Provincial Police were present. Allegations were made in the application that the effect of that meeting was highly intimidatory. The effect of the meeting was to give rise to dissension and conflict among the employees and fear for the consequences if they participated in a lawful strike, also fear for their continued position with the company.

There were also, prior to that meeting, allegations made of conduct involving management and a circulation of petitions designed to create fear and conflict among the employees.

There are allegations of bulletins being distributed by management, one in particular that is of a very critical nature in so far as the bargaining relationship of the union and the company was concerned. That's referred to on page five of the application for consent to prosecute. It's a document that was circulated over the signature of the president of the company, Fred Berlet, and it says, in part, "the management and supervision of Fleck prefer to deal with our people." I may read the first part of it.

"I have on many occasions before stated our company's policy on unions but I think it can stand repeating again at this time. The management and supervision of Fleck prefer to deal with our people directly rather than through a third party. This is a non-union organization. It always has been and it is certainly our desire that it will always be that way.

"This does not mean that from time to time we do not have problems. However, we have always been able to work these out among ourselves without the intervention of outsiders. Unions have never gotten anyone his job, neither have they caused anyone to keep his job. Only each of us working together to make Fleck a viable, healthy business can do that . . . We want to keep our plant free from artificially-created tensions that can be brought on by the actions of outsiders such as a union. We feel that a union would be of no advantage to any of us . . .

"It is not necessary for you to pay union dues to receive fair treatment at Fleck."

I realize, Mr. Chairman and members of the committee, that this committee, as I said, is not going to get into the merits of all this, but it is germane to look at the timing and the effect in order to understand the conduct of the respondent, Jack Riddell.

He injected himself into this situation—

Mr. Sterling: Could you just tell me what the date of that memorandum was?

Mr. MacLean: The memorandum is dated November 16, 1977. It is on page five, Mr. Sterling.

As I said, I didn't want to get into the merits of the matter. But it is necessary to look at this in order to examine the context and the character of the conduct complained of. One of the major matters of complaint in the application for consent to prosecute is that the company was not bargaining in good faith. The company would not discuss or bargain in good faith. The company would not discuss or bargain on union security.

Then we look at the conduct that's complained about in the application for consent to prosecute and in the notice of intent to bring an action for libel and slander. The statements that are being made to the effect that the union does not represent the employees. That is the same sort of thing the company is saying, namely, it won't agree to discuss union security. To say that the union does not represent the employees in those circumstances plays in with the company and in my submission is a very serious statement to be making, apart from the considerations that the statements also involved allegations that the union had obtained its membership, in effect, by committing a fraud on the Labour Relations Board.

That's the context of all this. Continuing on, when the application first came on for hearing before the Ontario Labour Relations Board on April 11—that's the application for consent to prosecute—counsel for Mr. Jack Riddell, who was not present at the hearing, raised a preliminary objection to the board's jurisdiction to entertain the application made in respect of Mr. Riddell on the grounds that sections 37 and 38 of the Legislative Assembly Act conferred privileges upon Mr. Riddell which prevented the application from being made against him.

In this respect, counsel for Mr. Riddell argued that as the application was made during the time of privilege contemplated by section 38 of the Legislative Assembly Act, it could not be made or entertained by the board at this time. Counsel for Mr. Riddell did not ask the board for a ruling in respect of his objection based on section 37, but took the position that the determination of this issue and the question as to whether the statements made by Mr. Riddell were sufficiently within the discharge of his duties as a member of the assembly to fall under section 37 could only be made at the end of the hearing in the light of all the evidence adduced.

As I understand it, in his submissions here yesterday, Mr. Bullbrook was not complaining that there was any violation of his client's parliamentary privilege because of anything contained in section 37; that is, he was not complaining that there was any involvement of an interference with his freedom of speech under section 37, as to anything said by his client before the assembly. I would interpret that to include, if that particular branch of the law applies, any extension of that. I'll come to that qualificaion later in my submission.

It is also my understanding that Mr. Bullbrook was not asserting a violation of parliamentary privilege, based on the physical service of the document in his office. So I put it to the committee that any claim in law in regard to those two matters must be taken to have been abandoned by Mr. Riddell.

[11:00]

Following the hearing of April 11 before the Ontario Labour Relations Board, the board then released a decision on or about May 2 and dismissed Mr. Riddell's claim, the privileges under section 38, as constituting a bar to the application against him. In its decision, the Ontario Labour Relations Board reviews at length the history and precedents dealing with the scope and meaning of parliamentary privilege and the subject matter intended to be covered by section 37 of the Legislative Assembly Act.

I think it is useful to examine the reasons of the Ontario Labour Relations Board. After giving lengthy reasons the board concludes, in paragraph 35 of its decision, as follows:

"For the purposes of clarity we summarize our conclusions as follows: If the board's proceedings under section 90 of the Labour Relations Act are of a civil nature within the meaning of section 38—a proposition which we expressly reject—then the term 'molestation' in section 38 of the Legislative Assembly Act refers primarily to physical detention, arrest or committal in relation to civil proceedings and not to the mere institution and hearing of civil proceedings."

That is basically my submission as well, Mr. Chairman and members of the committee, that "molestation" is not the mere institution and hearing of civil proceedings. It is not molestation to initiate a civil action or to proceed with that civil action.

The board continues: "If 'molestation' in section 38 includes harassment of a member by the institution of civil proceedings which are frivolous and vexatious, there is nothing on the face of the instant application to establish such an abuse. In fact, the board's proceedings in respect of an application for consent to prosecute are 'quasi-criminal' or sufficiently criminal in nature as to be outside the scope of proceedings of a civil nature contemplated by section 38 of the Legislative Assembly Act."

The board then goes on to conclude: "For the above reasons, we are satisfied that there is nothing in section 38 of the Legislative Assembly Act to impede the jurisdiction of this board to entertain an application for consent to prosecute Mr. Riddell."

I would like to take the committee through some of the highlights of the reasons given by the Ontario Labour Relations Board.

"In its decision, the board reasons, among other things, as follows:

". . . from 1770 to the present, members of Parliament could assert no general privilege with respect to the institution of civil proceedings against them. Arrest and imprisonment in relation to those proceedings was, however, recognized as a form of molestation and interference with the discharge of their duties."

I want to say this—and I will return to this later on—there is some question about whether at any time the initiation of civil proceedings constituted a molestation. There is serious question about the accuracy of the statement made by the board and we will see that when we look at Erskine May.

I want to continue: "Their privilege in that regard continued."

There is no doubt that before passing, there was a privilege against being impleaded in a civil action but, as we will see, the way that was dealt with was by certain writs that were issued or directions that were issued by Parliament for the courts staying the proceedings.

There was a writ of supersedeas. I just want to mention that to the committee at this point.

Let us continue with the board's reasoning: "In England, from then to now, the arrest, imprisonment, detention or attachment of members of Parliament in relation to matters of debt and other civil actions has been viewed as molestation and breach of their privilege. The instituting and maintaining of civil actions has not.

"The law appears to be identical as it applies to members of Parliament of Canada. The privileges of the members of the Senate and House of Commons were first established in section 18 of the British North America Act. That section was repealed and reenacted by section 18 of the Parliament of Canada Act which provides:

" 'The privileges, immunities and powers to be held, enjoyed, and exercised by the House of Commons and by the members thereof respectively shall be such as are from time to time defined by acts of the Parliament of Canada, but so that the same shall never exceed those at the passing of this act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the members thereof.'

"The effect of that section is to grant to federal members of Parliament the same privileges and immunities that were held by members of the House of Commons of the United Kingdom in 1875. They do not, therefore, have complete immunity from civil actions since that immunity had been removed from their British counterparts for over 100 years at the time of the 1875 statute." That is the Parliament of Canada Act. "The issue then becomes whether members of the Legislative Assembly of Ontario enjoy greater privileges and immunities than their peers in Ottawa and Westminster.

"The Legislative Assembly of Ontario was established by section 69 of the British North America Act. That statute did not, however, invest any parliamentary privileges and immunities on the members of the Legislature. In 1876 . . . the Legislative Assembly of Ontario enacted what has come to be the present section 38 of the Legislative Assembly Act. In its original form it was as follows:

" 'Except for any breach of this Act, no member of said assembly shall be liable to arrest, detention or molestation for any debt

or cause whatsoever of a civil nature within the legislative authority of this province, during any session of the Legislature, or during the 20 days preceding or the 20 days following such session.'

"In our view section 38 of the Legislative Assembly Act must be interpreted as giving to members of the Legislature of Ontario the same privileges and immunities from arrest, detention or committal in matters relating to civil proceedings as have been enjoyed by the members of the British House of Commons and the Parliament of Canada since 1875, and nothing more.

"We find that the Legislature did not intend, by the enactment of section 38 of the Legislative Assembly Act, to impose on the citizens of this province the potential for the same mischief that was done away with by the English statute of 1770. In argument, counsel for Mr. Riddell conceded, as he must, that if his interpretation of the word 'molestation' in that section is correct, a member of the Legislative Assembly who had, for example, negligently run over and killed a child while driving his automobile could not be made the subject of a civil action in respect of that serious event during the time of privilege described in section 38. In our view that is not the law in Ontario.

"When section 38 was enacted in 1876 the scope of the privileges of members of Parliament both in Britain and Canada was well settled and the word 'molestation' did not have so broad a meaning as to include the institution of any civil proceedings. The 10th and 20th century meanings of the word 'molestation' are well enunciated in May's 19th edition, pages 148 to 153. It is clear that arrest in execution of a civil judgement and to secure the payment of a civil debt is viewed as 'molestation' and in breach of the privileges of a member of a legislative body.

"In modern usage, 'molestation' most often refers to threats, harassment and actual physical abuse of members of a legislative body.

"It may be that the institution of civil proceedings which are on their face frivolous and vexatious and are calculated to embarrass a member or interfere with the normal execution of his duties would amount to 'molestation' within the meaning of section 38 of the Legislative Assembly Act. But in the instant case, given the particulars alleged in the material filed by the applicant, that is not the case; if the facts alleged against Mr. Riddell are proved, there is an arguable case as to whether breaches of the Labour Relations Act have occurred and whether this board's consent to a criminal prosecution should issue.

"Do members of the Legislative Assembly of Ontario enjoy by prescriptive right the same immunities from civil proceedings that were held through usage by members of the Imperial Parliament from 1477 to 1770? The highest judicial authority suggests that they do not.

"In Kielley v. Carson, the judicial committee of the Privy Council held that in the absence of express statutory authority, the House of Assembly of Newfoundland did not have the inherent authority enjoyed by the Parliament of Westminster to prosecute and commit a subject for threats and insults amounting to contempt out of the House. The common law privileges and powers impliedly enjoyed by a legislature and its members are no more, in the words of the judicial committee, 'than such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute.'

"The test to be applied, therefore, is whether complete immunity from civil proceedings for its members during the time of privilege is necessary to the functioning of the assembly of Ontario. It is difficult to see how so broad a privilege could be said to be necessary to the functioning of that body when it has not been necessary to the functioning of the Parliament of Canada since 1867 nor to the Parliament of the United Kingdom since 1770.

"We, therefore, find nothing in the common law giving rise to an inherent privilege in Mr. Riddell that would stay these proceedings even if they could be described as being of a civil nature.

"That brings us to the second branch of our interpretation of section 38. The argument advanced on behalf of Mr. Riddell also fails for the fundamental reason that proceedings by way of an application for consent to prosecute under section 90 of the Labour Relations Act are not proceedings of a civil nature within the meaning of section 38 of the Legislative Assembly Act. The Supreme Court of Ontario has determined that certification proceedings before this board are not a 'civil suit' or an 'action.' An application for consent to prosecute is less civil and more criminal in nature than certification proceedings.

"It would be inconsistent to suppose that the Legislature would have exempted its own members from the penal provisions of The Labour Relations Act by virtue of section 38 of The Legislative Assembly Act.

"The view that the Legislature did not intend its members to be immune from prose-

cution for acts in breach of The Labour Relations Act finds support in May:

". . . 'The development of the privilege has shown a tendency to confine it more narrowly to cases of a civil character and to exclude not only every kind of criminal case, but also cases which, while not strictly criminal, partake more of a criminal than of a civil character. Privilege of Parliament is granted in regard to the service of the Commonwealth and it is not to be used to the danger of the Commonwealth. . .'

"We are satisfied that the instant proceedings are sufficiently criminal in nature as to be outside the scope of what is contemplated in section 38 of the Legislative Assembly Act."

I then deal in my brief with the order in council that was referred to in these proceedings. Perhaps I could just deal with it in this way and leave it because it is my position that Mr. Riddell has abandoned any claim to a breach of privilege based on the physical location of any service on him. If I may just read this part:

Section 93(1) of the Legislative Assembly Act provides that the Speaker of the Assembly has control of the legislative chamber and such other parts of the legislative buildings as may be designated by the Lieutenant Governor in Council. An order in council approved by Her Honour, the Lieutenant-Governor, dated January 15, 1975, approved the recommendation of the Premier that, inter alia, the offices of the members should also be placed under the control of the Speaker.

At the time of the events herein this order in council had not been laid before the assembly as required by section 93(1) of the Legislative Assembly Act nor had it been filed with the registrar of regulations under the Regulations Act. Further, the order in council had not been published in the Ontario Gazette. Section 3 of the Regulations Act provides that unless otherwise stated in it, a regulation comes into force and has effect on and after the day upon which it is filed with the registrar of regulations. Further, in section 4 it is provided that "except where otherwise provided, a regulation that is not filed has no effect."

Section 5 of the act stipulates that every regulation shall be published in the Ontario Gazette within one month of its filing. Section 5(3) of the act provides that a regulation that is not published is not effective against a person who has not had actual notice of it.

[11:15]

So it's my submission that the order in council is ineffective for the reasons that have been mentioned. And that it does not operate therefore to extend, parliamentary privilege outside of the legislative chamber. The privilege exists only within a legislative chamber. That's the effect of the fact that the order in council is of no legal validity.

Now the terms of reference and the issues in this case, I have set forth in my brief as follows:

The area of inquiry and relevance of subject matter are clearly stipulated in the terms of reference and mandate the committee to enquire into: "The matter of service of documents pursuant to the Libel and Slander Act and the Labour Relations Act on the member for Huron-Middlesex contrary to section 38 of the Legislative Assembly Act . . ."

The subject of relevance, therefore, is clearly the service of documents. The committee is accordingly limited in its inquiry to the determination of whether the service of the documents in question constituted a breach of the member's privilege as provided by the immunities conferred under section 38 of the Legislative Assembly Act.

The committee must therefore examine:

1. What was served, namely, the nature of the documents and the character of the proceeding to which it related;

2. Where it was served, i.e., whether it was served within the precincts of the building under the control of the Speaker. That issue, in my submission, is no longer before the committee;

3. When it was served, i.e., was it served during the period of privilege? That issue is before the committee, but there is not dispute about it;

4. Was the manner of service personal or by mail? Something may hinge on that, but my submission in the circumstance of this case is nothing really; it's really of no consequence.

It's my submission, however, that the question of threshold and major importance, in the circumstance of this case, is what was served, in other words, the identification of the documents and the proceedings to which they related. The answer to this question may make inquiry into some or all of the other questions unnecessary.

The committee, of course, must also consider the meaning and reach of section 38 of the Legislative Assembly Act. This section, however, cannot be interpreted in isolation from section 37 of the act or from sections 45 or 52. These sections, insofar as they are material to this case are as follows:

"Section 37. A member of the assembly is not liable to any civil action or prosecution, arrest, imprisonment or damages, by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise,

or said by him before the assembly or a committee thereof . . ."

That's the free speech protection that's given under Legislative Assembly Act; it's a free speech provision.

"Section 38. Except for a contravention of this act, a member of the assembly is not liable to arrest, detention or molestation for any cause or matter . . ."

I want to pause there just for a moment, Mr. Chairman and members of the board. In his submissions yesterday, Mr. Bullbrook quoted the section as saying, "any case or matter." I think that was a matter of inadvertence on his part, I don't attribute that to any attempt to misrepresent that.

Mrs. Scrivener: Mr. Chairman, I believe he said it correctly at one point. He said "cause."

Mr. MacLean: It's important to bear that in mind, that it's "cause," not "case."

. . ."for any cause or matter whatever of a civil nature during a session of the Legislature or during the 20 days preceding or the 20 days following a session . . ."

We must also consider, when we're interpreting section 38, the other provisions, any other provisions that are relevant in the statute. My submission is relevant.

Section 45(1) provides: "The assembly has all the rights and privileges of a court of record for the purposes of summarily inquiring into and punishing, as breaches of privilege or as contempts and without affecting the liability of the offenders, to prosecution and punishment criminally or otherwise, according to law, independently of this act, the acts, matters and things following:

"1. Assault, insult, or libel upon a member of the assembly during a session of the Legislature or during the 20 days preceding or the 20 days following a session.

"2. Obstructing, threatening or attempting to force or intimidate a member of the assembly . . .

"10. Taking any civil proceeding against, or causing or effecting the arrest or imprisonment of a member of the assembly in any civil proceeding for or by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or said by him before the assembly or a committee thereof.

"11. Causing or effecting the arrest, detention, or molestation of a member of the assembly for any cause or matter of a civil nature during a session of the Legislature or during the 20 days preceding, or the 20 days following a session . . ."

Section 52: "Except so far as is provided by section 40, nothing in this act shall be construed to deprive the assembly or a committee or a member thereof of any right, immunity, privilege or power that the assembly, committee or member might otherwise have been entitled to exercise or enjoy . . ."

At this point, it is my submission that the case referred to by the Ontario Labour Relations Board, Kielley and Carson, which dealt with the powers of the House of Assembly of Newfoundland, if that case is good law in Ontario, I refer also to the case of Landers and Woodsworth that Mr. Kellock mentioned yesterday. It's my submission that there are no inherent privileges in the Legislative Assembly. Those privileges must be found in a statute; they must come by statute.

Section 52 relates really to the privileges that emanate from the freedom of speech provision which are considerable in my submission. There's no question about the fact that the area is somewhat murky from a legal point of view. I think that the case referred to by the Labour Relations Board and the Landers and Woodsworth case are good authority for the position and that that position is stronger than the other position that there are no inherent privileges and that those privileges must come by statute.

Let me proceed to the points of my arguments on the merits. It is submitted that the facts of this case do not establish or suggest any breach of privileges of the member for Huron-Middlesex as contemplated by the Legislative Assembly Act and, in particular, section 38 thereof. It is manifest that section 38 does not confer a special status or immunity on a member of the Legislative Assembly from civil actions or criminal or quasi-proceedings during a time of privilege.

Section 37 is the only section which confers a privilege on a member of the Legislature from any civil action or prosecution, arrest, imprisonment or damages by reason of any matter or thing brought by him or said by him before the assembly or committee thereof. Obviously section 37 prohibits only one type of action or prosecution against a member of the Legislative Assembly. In substance, section 37 provides a member, with absolute privilege for anything said by him before the assembly or a committee thereof. It protects the member's freedom of speech.

In applying elementary principles of statutory construction, it is manifest that if section 38 intended to confer an all-inclusive privilege on a member of the Legislative Assembly from all civil actions or any civil action, in addition to those contemplated by

section 37, during the time of privilege, it would have said so. The fact that section 37 expressly identifies and prohibits one particular type of civil action compels the conclusion that such action is the only action which the Legislature intended to prohibit. This construction is not only the most reasonable one, which is my submission, but it finds support in the canon of interpretation envisaged by the maxim "expressio unius est exclusio alterius," which means that where "a written instrument contains a specific provision as to a particular subject-matter, the provision as to that matter, which the law would imply if the instrument were silent, cannot be resorted to." That is, the expression of one thing excludes another.

Section 38 does not suggest or imply that a member is not liable to a civil action. It doesn't say that at all. The section states that "a member of the assembly is not liable to arrest, detention or molestation for any cause or matter whatever of a civil nature during a session of the Legislature or during the 20 days preceding or the 20 days following a session." As indicated, it plainly does not say that a member is not liable to a "civil action." I may add, it only says that in section 37. The key words are "not liable to arrest, detention or molestation for any cause or matter whatever of a civil nature." No complaint is made in the instant case that the member for Huron-Middlesex was ever arrested or detained. The sole question is whether or not he was subjected to "molestation for any cause or matter whatever of a civil nature." It is submitted that the meaning and scope of "molestation" must be derived from the context in which it appears and on the basis of the ejusdem generis rule of statutory construction.

I want to pause here just for a moment. Mr. Bullbrook, on behalf of Mr. Riddell, in his submissions yesterday, appeared to separate molestation and to isolate the word "molestation" as it appeared in section 38 from the preceding words in that section. In other words, he appeared to separate it from the words "arrest, detention" and was content to read only "molestation for any cause or matter whatever of a civil nature."

In my submission it is a basic tenet of statutory interpretation that you've got to read the whole thing. You can't isolate it. So that if you do read the whole thing, you must relate "molestation" to the context. This is where we get to the rule of ejusdem generis. This rule is stated in Maxwell on Interpretation of Statutes:

"The general word which follows particular and specific words of the same nature as itself takes its meaning from them and is presumed to be restricted to the same genus as those words. For 'according to a well-established rule in the construction of statutes, general terms following particular ones apply only to such persons or things as are ejusdem generis with those comprehended in the language of the Legislature.' In other words, the general expression is to be read as comprehending only things of the same kind as that designated by the preceding particular expressions, unless there is something to show that wider sense was intended . . . "
[11:30]

In applying the ejusdem generis rule, the general word "molestation" must be interpreted and derive its meaning from the preceding specific words "arrest" and "detention."

I want to stop there for a moment too. I am not getting into the pure technical application of rules of construction, but a fortiori I am saying that, applying the rules of construction to a statute, the only reasonable conclusion that can be reached is that molestation takes its meaning from the context, from the words "arrest" and "detention".

One finds strong authority for that proposition when one searches the authorities and goes back to 1477, because the one thing that bothered the early House of Parliament in terms of molestation was the threat and fear of actual arrest of its members, particularly in the reign of James I and Charles I. Any student of history knows what I am talking about. That was the context in which the term "molestation" derived its meaning, and throughout the authorities over the time span from back in the 1500s, as I said we hear the expressions "freedom from arrest," "freedom from imprisonment"—freedom from the kind of molestation that was coming at that time from incursions of the crown on the House of Parliament. So that I am not just relying on some technical, bare, legal principle of construction.

In this respect, the word "molestation" is confined in its meaning to the genus expressed by the preceding specific words. In this respect, therefore, it is submitted that the word "molestation" is restricted to the genus of forcible physical interference or incarceration or the threat thereof. An example of this would be, for instance, if a member of Parliament had a judgement levied against him for debt and he was examined under oath in aid of execution and he refused to reveal the extent or nature of his assets. If the plaintiff in the action then proceeded to have him committed for failing to answer the question during the time of privilege, then

it seems clear this would constitute "molestation" within the meaning of the section.

Or if any order of attachment was sought against a member of the Legislative Assembly as a result of a civil proceeding, as a result of a civil judgement, that would come squarely within the meaning of "molestation" in my respectful submission. That is the most reasonable construction to be placed on the meaning of "molestation" having regard to its historical signification, having regard to the application of very basic principles of statutory interpretation.

I go on to say, in the context in which it appears, the word "molestation" therefore has extremely restricted application and meaning. In other words, its meaning in the context appears to be much more limited than the common law meaning of "molestation," certainly the common law meaning as expressed by the Labour Relations Board.

Examples of conduct which the common law has treated as constituting "molestation"—I am referring here to the interpretation placed upon that by the Labour Relations Board, and I say there is some question about the area of molestation—have included the type of conduct reviewed by the Ontario Labour Relations Board in paragraph 26 of its decision.

It is submitted that the foregoing restrictive interpretation of "molestation" is reinforced by the fact that section 45(1), 1 and 2, stipulate expressly other types of conduct, for example, assault, insult, libel, obstruction, threats, intimidation, et cetera, which would at common law be considered "molestation." This, therefore, compels the conclusion that the word molestation was not intended to cover, what would be considered at common law to be molestation in the broad sense but is restricted, as submitted above, to the genus contemplated by the words "arrest" and "detention." Indeed, this was the conclusion reached by the Ontario Labour Relations Board.

It is submitted that while section 52 of the Legislative Assembly Act is couched in somewhat general language, it cannot, in the face and context of sections 37 and 38, and section 45 operate to confer immunity on a member from a civil suit, even if there was such immunity in mediaeval times in England. The operation of this section is more consistent if applied to the protection of privileges relating to the conduct and statements made by a member in the Legislative Assembly, as a freedom of speech provision in the area of freedom of speech.

Even if, however, section 52 operates to incorporate unexpressed common law privileges in addition to those expressly referred to in the statute, it is submitted that there is no authority at common law for conferring a special status on the member from Huron-Middlesex which would operate to immunize him from an unfair labour practice proceeding before the Ontario Labour Relations Board or a civil action for libel and slander for things said and done by him outside of the Legislative Assembly.

It is submitted that as a consequence of section 52 and 37, it is arguable that if a member of the Legislative Assembly was served with a writ of summons or a court document in a civil action in the Legislative Assembly, he could claim breach of privilege. I'm talking about the legislative chamber at the moment, the area of the Speaker.

It is manifest from the facts of this case that any service which was made on Mr. Riddell in this situation was not made within the sanctuary of the legislative chamber, or assembly, but was made in an area outside of the control of the Speaker. I have dealt with that already, and I don't intend to follow that paragraph through, Mr. Chairman.

Continuing on: Apart from any other consideration, it is submitted that when section 37 of the Legislative Assembly Act is compared with the freedom of speech privilege which existed at common law and which has been held to exist for members of the Parliament of Canada, it is strongly arguable that the privileges under section 37 are more limited than those of the members of the Houses of Parliament in Ottawa. In this respect, section 37 confines the privilege to things brought or said by the member "before the assembly or a committee thereof."

In the circumstances, therefore, it is extremely doubtful whether there is any concept of extension of parliamentary privilege outside of the Legislative Assembly.

I don't think it's necessary for this committee to decide that in these proceedings, but I do raise the question that there is serious doubt. We do have the judgement of the Supreme Court of Canada in the Roman case. What was said in approving the statement made by the Court of Appeal in that case, would cast extreme doubt as to whether or not the concept of extension of parliamentary privilege, outside of the area under the direct control of the Speaker, is valid.

But certainly I say this, in so far as section 37 in the Legislative Assembly Act of Ontario, it is very specific in confining the privilege to things brought or said by the member before the assembly or a committee thereof.

Now, just going on: It will be noted in the authorities that are reviewed that the common law has applied a concept of proceedings in Parliament as relating to and covering matters outside of the Legislative Assembly, but pertaining to and as part of the proceedings of the House which took place within the Legislative Assembly. For example, see Roman Corporation Limited et al. v. Hudson's Bay Oil & Gas Company [1972] 1 O.R. 444. In that case, the court refers to the language contained in the Bill of Rights Act of 1689, which used the words "proceedings in Parliament" and not as is contained in section 37 as "things brought or said before the Legislative Assembly or a committee thereof."

The Bill of Rights Act is quoted on page 37 of this document as saying this: Article 9: That the freedom of speech and debates of proceedings in Parliament ought not to be impeached or questioned in any court or place, out of Parliament." As will be seen when we get to it, later on in this presentation, the—

[Interruption in recording]

During the course of the committee's inquiry, facts, opinion and hearsay of an extremely self-serving nature were received which were of questionable relevance and probative quality. Some of the difficulties in this respect originated because of the different interpretations that were sought to be placed on the terms of reference by the committee members and from the procedure followed by the committee.

But, just to sum it up, I am not going to take the committee's time to read all of this, my concern is that during the course of questioning by members of the committee, questions were asked which elicited hearsay answers, opinions, matters which were of an extremely doubtful probative value on the merits of the matter, on the merits of the proceedings, on the merits of the libel and slander action, on the merits of the application before the Labour Relations Board.

Mr. Riddell, in his testimony, went to some length in telling the committee why he went out to the Fleck plant and what he did when he was there. He dealt, in other words, with matters which preceded the initiation of the application for consent to prosecute and the service of the notice of intent to bring an action for libel and slander. In doing that, by submission he was involving himself in the merits of the case and the problem is that the committee heard that evidence, but did not hear all of that evidence and certainly disclaimed any intention or desire to get into the merits of the case.

Again, I come back and I submit with respect to the committee that they must assume for purposes of these proceedings the truth of the matters stated in the application for consent to prosecute.

Indeed, it seems to me that Mr. Riddell in his evidence to this committee did not quarrel with or deny that allegations as to what he was supposed to have said to the newspapers or to the news media.

In fact, I invite the committee to find that he admitted saying them if the committee has to go that far. I refer the committee to page 53 of Hansard of May 18, 1978, where Mr. Bolan puts this question to Mr. Riddell: "So what you are telling us is that as a result of the various statements which were made to you, you then made the statements which are the subject matter of the libel and slander action?"

I say that is an admission. Certainly, if Mr. Riddell was going to get into the merits of the matter, one would have expected him to have denied making the statements. Indeed, when asked the question as to whether or not Mr. Riddell had apologized or denied the statements, Mr. Bullbrook's answer to that, as I recall, was that he couldn't help us one way or another. I say that in all the circumstances one is driven to the irresistible conclusion that Mr. Riddell does not deny making the statements.

I say again that this committee ought not to concern itself with the merits of the matter but, if it does, those are the merits. You have only heard part of it and you can't decide a case by hearing evidence, the quality of which was very questionable. There were facts, opinions and hearsay statements of a very self-serving nature that were uncross-examined. For the committee to make a decision on the merits of the case would invite inaccuracy and would invite serious question concerning the validity of its findings.

I don't think I have to comment any further on it. Some questions were asked, which were designed to deal with the capacity in which Mr. Riddell acted when he went to the plant and when he made the statements that he did. In my submission, if what he said was not said before the assembly or a committee of the assembly, then he simply wasn't acting in his capacity as a member at the time, because those are the only circumstances in which it is recognized that a member is acting strictly in his capacity of member of the Legislative Assembly.

In my submission, on the basis of authorities, there is no substance for saying that when Mr. Riddell was at the plant he was acting as a member of the Legislative Assembly.

Where would that take us? We heard that Michael Cassidy also made a visit to the plant and joined the picket line. What about him? Would he be acting as a member of the Legislative Assembly if he involved himself in civil torts when he was there? I am sure that he wouldn't, but what if somebody from the Legislative Assembly—I would rather not use names—had gone to the picket line and had, let us say, thrown rocks through the windows of the plant, threatened people who were going to work, scabs, with loss of their jobs and so on? We can go on, and we can use our imagination at length on this, but it is all the same matter.

The question that I put, which is stated on page 25 of my brief, come to this: Does a member of the Legislative Assembly who embarks on a course of conduct and makes statements outside of the Legislative Assembly calculated and apparently designed to discredit, denigrate and destroy a union as the bargaining agent for a group of striking employees and to persuade the employees and the public to side with the company, enjoy legal immunity for his actions. It is submitted that the claim to privilege advocated by Mr. Riddell in this case is predicated on the thesis that when he engaged in his anti-union conduct and made his defamatory statements, he was acting within the scope of his duties and functions as a member of the Legislature and on behalf of the Legislative Assembly. The absurdity of such a proposition needs no comment.

My submission is that there is absolutely no authority in the courts or before any parliamentary committee which would substantiate this claim to privilege. I have, I think, conducted a fairly thorough examination and I am sure that Mr. Kellock will correct me if I am wrong on the basis of his legal research, but I have found no authority which would substantiate such a claim in this case.

I can understand that perhaps there was some concern on the part of some members because this area has not been inquired into at any length by this assembly in the past. But certainly on a review of the law and the parliamentary precedents, there is just no authority for this. Any authority is to the contrary.

I say also that Mr. Riddell's case is predicated on the thesis that members of Parliament can do no wrong, whether within the Legislative Assembly or otherwise and that they enjoy the status of super-citizens who are litigation-proof. Again, it is my submission that the absurdity of this proposition needs no comment.

It is my submission that the institution of a civil lawsuit does not constitute molestation, that under sections 37 and 38, of the statute it is perfectly proper to initiate a civil action against a member of the Legislative Assembly for torts committed by him outside of the assembly—in this case, in the circumstances that we have alleged in the proceedings that this committee is reviewing.

It is submitted that the inconvenience that may be occasioned a defendant or respondent in a civil proceeding which is otherwise proper does not convert that civil proceeding into a molestation. It does not become a molestation until that proceeding goes to the extent of threatening the detention or attachment or some physical detention or interference with the member.

This is all consistent with and completely compatible with the evolution of the law in this area. We go back to antiquity and there is just no authority to the contrary, certainly that I have been able to find. It is all to support the proceedings that are under review in this matter.

A layman would think it extraordinary if he were confronted with a proposition that he was violating the law because he was asserting his civil rights and seeking redress for a violation of those civil rights against a person who is a member of the Legislative Assembly for something done outside the assembly. With all respect, I think it is extraordinary too. I think that if the members of this committee examine it in the light of the true scope and nature of parliamentary privilege they will agree with me.

As I said before, the operation of parliamentary privilege is designed to protect and ensure that members of the Assembly will be able to perform their essential functions. That has been confirmed by statute to be their functions as determined in section 37, in section 38, in section 45.

If a civil action is proper, as I say it is proper, it is not prevented and the implication —the overriding implication—is that it is proper. If a civil action can be brought then it doesn't become a molestation because of inconvenience that is suffered, because of the party being required to consult with his lawyers, being required to pay legal expenses and to spend time in the matter.

At this point in time, I'd like to refer the committee to a case which is very close to the one before you, if not on all fours, and I did provide the members of the committee with copies of the Commons debate for May 2, 1978. I'd like to look at that and just read parts of it.

I'd like to refer you to the first page of the excerpt of the Commons debate of May 2, 1978. It's entitled: "Mr. Huntington—Legal Proceedings Launched by Vancouver Branch of CUPW."

"Mr. Ron Huntington, (Capilano): Mr. Speaker, to explain the background of my question of privilege, I must go back to a meeting of the standing committee on Transport and Communications which took place on Thursday, May 5, 1977, at which the Post Office estimates were being considered. For some years I had been deeply concerned, and I still am, about the activities of the Canadian Union of Postal Workers, particularly as they affect the city of Vancouver. I have long been convinced that the leadership of the union in Vancouver is controlled by revolutionaries and agitators whose principal aim is to create havoc in the postal system and disrupt the economy in general.

"At the committee meeting on May 5, 1977, I expressed certain views and passed on certain information which had come into my possession to the then-Postmaster General, currently the Solicitor General (Mr. Blais) who was appearing before the committee. I said, inter alia:

" 'We in Vancouver know that there are a small number of radicals running the union affairs, to the consternation of many of the people within that union. So I would say we need some democracy in union affairs and perhaps you might give consideration to initiating something like that.' "

He goes on:

"I had, and still have, a thick file of evidence to support the contentions I expressed at that meeting. Much of the information I have has come to me from postal workers themselves, the honest rank-and-file who seek only to do a day's work for a day's pay without harassment and intimidation and who are as troubled as I am by the activities of their union leadership. I have documented evidence of the theft of registered mail, destruction and opening of mail, deliberate encouragement of on-the-job slacking, distribution of inflammatory pamphlets and other abuses.

"One conclusion I arrived at, and which I have expressed publicly several times, is that 45 per cent of the union membership has been denied any voice in union affairs. It goes without saying that nothing would induce me to identify my informants and thus expose them to victimization.

"On the day following the committee meeting, Friday, May 6, 1977, and later, on or about May 16, I participated in radio talk shows hosted by Ed Murphy, at which I repeated the substance of my remarks at the committee meeting and answered questions phoned in by callers. At the first of them I said there were about 30 radicals in and around the union leadership of the Vancouver postal workers, and I named some of them.

"At the second talk show, a press release by Mr. Peter Whitaker, president of the Vancouver local of the union, was read out. He denied my allegations and accused me of conducting 'a despicable witch-hunt reminiscent of the McCarthy era.' He demanded a retraction from me. Needless to say I refused to withdraw anything I had said, pointing out that I had collected a mass of material which supported my contentions.

[12:00]

"I might add that I raised this matter of national concern some years ago when the Honourable Bryce Mackasey held office as Postmaster General. I privately met with and turned over to Mr. Mackasey the material and information I had concerning the behavioural patterns that existed within the Vancouver Post Office. I took a very low-key attitude at the time. I was not seeking confrontation but a resolution to the problems besetting the post office, and that remains my position.

"During the postal strike of 1975 at about the time the government offer was to be voted on, the union leadership in Vancouver denied those members who crossed the picket line the right to vote on the government offer. As a local member of Parliament, I was approached by a group of inside postal workers and was asked for advice. The advice given was that they should get an injunction against the union, and I assisted these union members with that procedure. It was at this time that I became concerned with the threat to the democratic process of their union affairs."

Then he goes on to say: "Following the first of the talk shows, a meeting with the vice-president of the local union, to which I had agreed, failed to materialize because I was informed the union had decided to take alternative action. This action was the issuing of Mr. Whitaker's press statement, prepared I believe by the union's lawyer, Mr. Stewart Rush, and the demand for a retraction, which I refused to make. The union then proceeded to issue a writ against me which was finally served on July 26, 1977.

"The writ was broadly worded and sought damages for slander, defamation and innuendo, and an injunction to restrain me from further speaking, circulating, broadcasting or causing to be broadcast or circulating or publishing the said or any similar slander,

defamatory statement or malicious falsehood or innuendo.

"What was particularly odd was the length of time it took them to serve the writ. During the intervening weeks I was readily available, either in Vancouver or Ottawa, and I made no attempt to conceal my movements. Nevertheless, various attempts were made to serve the writ at places where I did not happen to be, and it was suggested by the union's lawyer that I was attempting to evade having it served on me."

Then Mr. Huntington goes on to say on page 5071:

"I am very close to that. However, I would like to point out that this is not a civil law suit—I can deal with those. This has political overtones and that is the reason I have raised the matter today. However, the complaint of the union is much less specific, alleging that: 'The defendant intended to deprecate the operation of the union and to prevent it from carrying out its lawful activities as a bargaining agent on behalf of its members.'" I am not going to read the rest of that.

He goes on to say: "My complaint of privilege calls upon two principles: first of all, a member's right to protection from obstruction in the pursuit of his duty and, secondly, the concept of what constitutes a proceeding in Parliament.

"Freedom from molestation is an ancient parliamentary privilege which, although it has never been defined, has been very widely interpreted. A former clerk of the British House of Commons, Sir Gilbert Campion, interpreted molestation as: '... including not only assaulting or insulting members or challenging them to fight on account of their conduct in Parliament, but even attempting to influence them in their parliamentary conduct by improper means.'

"I have taken this quotation from a memorandum by Mr. L. A. Abraham which was submitted to the British select committee on parliamentary privilege, whose report was published on December 1, 1967." He goes on to make some argument to support his claim for parliamentary privilege. I will leave that to the committee members to read.

The disposition given by the Speaker, which is reported on page 5073, was that he stood the matter over and that he was going to engage himself in some research into the problem. The disposition of that claim of breach of privilege was made on May 15. That is contained in the excerpt I have from the Commons debates of May 15, which I place before you.

He says this: "On Tuesday, May 2, 1978, the honourable member for Capilano (Mr. Huntington) raised a complaint of harassment and obstruction in his parliamentary duties by virtue of a writ which had been issued against him in connection with remarks he had made on a radio talk show on May 6, 1977. In this broadcast he had repeated the substance of remarks he had made in the standing committee on transport and communications the day before, concerning the activities of the Canadian Union of Postal Workers, particularly as they affected the city of Vancouver.

"The hon. member based his procedural argument first on the privilege of freedom from molestation and, second, on an interpretation of the circumstances in which a matter arising outside Parliament may be treated as a proceeding in Parliament with respect to privilege.

"It seems quite clear that this matter has caused the member certain difficulties in the performance of his duties as a member of Parliament, but I have trouble in accepting the argument that these difficulties constitute obstruction or harassment in the narrow sense in which one must construe the privilege of freedom from molestation, particularly in the face of what must be construed as being ordinary access to the courts of the land, which surely ought to be something Parliament would interfere with only upon the most grave and serious grounds.

"In his argument respecting what constitutes a 'proceeding in Parliament', the honourable member places reliance on the decision of Roman v. Hudson's Bay Oil and Gas, Trudeau and Greene, in which the High Court of Ontario held that a press release and telegram repeating what was said in the House were extensions of statements made in the House. The honourable member goes on to say that the decision was upheld by the Court of Appeal of Ontario in 1971, and in turn by the Supreme Court of Canada in 1973.

"However, the Supreme Court of Canada merely said that it did not dissent from the views expressed in the courts below as to the privileges attached to statements made in Parliament. I underline and emphasize those words 'made in Parliament.' It went on to dispose of the appeal on grounds other than privilege. Furthermore, Mr. Justice Hugessen in the recent decision on the Ouellet case, which was affirmed by the Court of Appeal of Quebec, felt that the decision of the Ontario courts in the Roman case did not represent the law. Thus the question of what is a 'proceeding in Parliament' in Canada is not clear in terms of the judicial precedents.

"In respect of the position in the United Kingdom, which was referred to also by the

honourable member, in the 1967 report of the select committee on parliamentary privilege, the British House of Commons resolved to bring into immediate effect all of the recommendations of this committee which did not require legislation. The committee report in question recommended that proceedings in Parliament be defined by legislation, and that any communication between a member and a minister or an officer of the House concerning the business of the House should be fully privileged.

"While it seems that the meaning of the expression remains for the moment equally unclear in the United Kingdom, nevertheless it appears to exclude the factual situation set out by the honourable member. Therefore, while I am willing to accept the argument that there may be circumstances in which a matter arising outside Parliament can properly be considered as an extension of a proceeding in Parliament, and therefore covered by privilege, I feel I would be extending the definition of privilege, even on those precedents, to include discussions on an ad lib basis on an open line radio or television show, in which dialogue goes on for some time, questions are posed, and answers are made. Even though they are based on an original proceeding in Parliament, it would be an unwarranted extension of the reasoning in those cases to say that that circumstance could be accepted as an extension and, therefore, in fact, as a proceeding in Parliament within the precedents.

"Therefore, on either count, the extension of proceedings in Parliament or on the grounds of molestation, I am unable to find privilege in the honourable member's motion or question which he put before us."

That is how that was treated. I submit there is a very close relationship between the case before this committee and that case that was being considered on the claim by Mr. Huntington of a breach of privilege.

I would like to refer the members of the committee to page 28 of my brief which I have quoted from a number of authorities relating to the interpretation of privilege.

I don't want to belabour the point out of proportion, but I think it is germane to have a look at what some of the authorities have said as to the extent of privilege.

"The object of privilege is, of course, not to further the selfish interests of the member of Parliament but to protect him from harassment in and out of the House in his legitimate activities in carrying on the business of the House; consideration of the interest of the public in this regard overbears the usual solicitation in our law for the private individual."

It is in that area only where they allow the free reign of parliamentary privilege, but it is not to serve the selfish interests of a member of Parliament.

Going on: "The development of the privilege has shown a tendency to confine it more narrowly to cases of a civil character and to exclude not only every kind of criminal case, but also cases which, while not strictly criminal, partake more of a criminal than of a civil nature. This development is in conformity with the principle laid down by the Commons in a conference with the Lords in 1641: 'Privilege of Parliament is granted in regard of the service of the Commonwealth and is not to be used to the danger of the Commonwealth'."

And quoting from Mr. Justice Steele in the Abko Medical Laboratories case: "Most of those other cases relating to privilege of a member of Parliament are ones relating to libel and slander which in Ontario is covered and codified by section 37 of the Legislative Assembly Act. This is a codification of the basic common law rule of the privileges of members of Parliament." In other words, he is saying that that is where the privilege is found, in section 37.

"These privileges do not apply to mere civil"—and I am quoting from Pelletier and Howard—"actions in which there is no question of arrest of a member of Parliament." In the Pelletier and Howard case, when the Quebec Superior Court was called upon to determine whether a civil action as such was a breach of parliamentary privilege, the section interpreted in that case was section 4 of the Senate and House of Commons Act which said that the Senate and House of Commons respectively and the members thereof respectively shall hold, enjoy and exercise such and alike privileges, immunities and powers as at the time of the passing of the British North America Act were held, enjoyed and exercised by the Commons and House of Parliament of the United Kingdom. In that case, the mere bringing of a civil action was held not to be a breach of privilege.

Now quoting from the judgement of Viscount Radcliffe in the Attorney General of Ceylon and De Livera case, which is on page 29 of my factum, it is stated there as follows: "What has come under inquiry on several occasions is the extent of the privilege of a member of the House and the complementary question, 'What is a proceeding in Parliament?' There is no doubt that the

proper meaning of the words 'proceeding in Parliament' is influenced by the context in which they appear in article 9 of the Bill of Rights, but the answer given to that somewhat more limited question depends upon a very similar consideration, in what circumstances and in what situations is a member of the House exercising his 'real' or 'essential' function as a member? For, given the proper anxiety of the House to confine its own or its members' privileges to the minimum infringement of the liberties of others, it is important to see that those privileges do not cover activities that are not squarely within a member's true function."

I might say, members of the committee, that photostatic copies of the authorities I am referring to here have been given to you in the brown folder. Quoting from Mr. S. A. de Smith in 21 Modern Law Review: "There appears to have been no case decided since 1689 in which a court has expressly recognized that the institution of proceedings for defamation against a member of either House in respect of a matter covered by Article 9 is a breach of parliamentary privilege." That is even going into the free speech aspect.

[12:15]

Now there is a large body of law which deals with the question of whether a matter is an extension of the privilege, an extension of proceedings in Parliament and therefore an extension of the freedom of speech of a member, under section 37 in this case. There is a large body of law dealing with that and I don't propose to go into all of that matter because in my submission it is perhaps not of reasonable relevance to the inquiry that's being made here. But I think my only concern is that in interpreting section 38 it's not interpreted to include something which would be interpreted to be an extension of parliamentary privilege outside of the Legislative Assembly.

I just want to refer to my brief and, starting on page 35, deal with a situation that has existed prior to the Parliamentary Privileges Act.

Prior to the Parliamentary Privilege Act of 1770, members of Parliament in England were accorded parliamentary immunity from civil actions in respect of civil wrongs committed by them outside of the Legislature, even in their personal capacity. It did not appear, however, that the House ever treated the bringing of such an action during the time of privilege as a contempt or breach of privilege unless the immediate purpose of the action was to cause the arrest or detention of the member, or unless the cause of action itself related to an act done by the member in the House itself or in the performance of his duties as a member to the House. In such cases, the remedy adopted by the House of Commons, was to issue a writ of supersedeas or to otherwise stay the proceedings of the court until Parliament had adjourned. The House did not consider such cases to be matters of contempt of the House itself but only as matters which should be stayed during the time of privilege.

In the brief that I have submitted, to the members of the committee, I have included excerpts from Erskine May on parliamentary privilege and I'm referring particularly to chapter 7. That interpretation is readily open —from reading the reading material of Erskine May—that in an action where there was a privilege against being impleaded before 1770, that was not treated as a contempt, but was treated as a privilege; and the remedy given was to stay the action.

Just at this point, maybe I can be of some help to the committee. I have also given the committee an historical outline of a development of parliamentary privilege starting from 1487, Atwyll's case. In Atwyll's case in 1487, there was a declaration that no member should be impleaded during the time of privilege. I've set forth the historical review of the development of privilege.

It's clear from the authorities that starting in about 1700 efforts were made to limit the area of parliamentary privilege because of the abuses which Parliament considered resulted from the all-inclusive privilege against being impleaded.

Indeed, the Parliamentary Privilege Act of 1770—and there's a copy of that provided in the brown folder—is entitled An Act for the further preventing of Delays of Justice by Reason of Privilege of Parliament." And that act, also, removed the privilege from the servant of the member of Parliament so that up until that time even the servants were covered by the privilege against being impleaded.

Now in my statement, in paragraph 46, I go on to consider the meaning and intent of the phrase "proceedings in Parliament" as contained in article 9 of the Bill of Rights Act of 1688. I don't want to bother to belabour that point with the committee. The authorities I have cited under that on pages 38 and 39, are mainly from the Roman Corporation case.

The facts of that case were that Denison Mines were on the verge of selling out a majority of their shareholding to non-Canadians. It came up in Parliament and a strong position was taken by the government, by Mr. Trudeau and Mr. Greene, and state-

ments were made that it would not be government policy that they would allow this to take place. Then there were telegrams and a news release from Mr. Trudeau and Mr. Greene following that and then an action was brought against them because the contract for the sale of Denison shares was affected and it was not completed because of their statements. Actions were brought for damages. The question of parliamentary privilege came up and it was held by the High Court and the Court of Appeal that they had been engaged at the time in proceedings in Parliament. They were so closely connected to what had taken place in Parliament that they had to be considered as extensions of Parliament; in other words, proceedings in Parliament themselves.

That case, as pointed out by Mr. Jerome, the Speaker of the House of Parliament in Ottawa, was somewhat qualified by the remarks of the Supreme Court of Canada. The Supreme Court of Canada agreed that statements made in Parliament were, but the Supreme Court of Canada rested their decision on other grounds of qualified privilege, the law of libel and slander.

Other cases I have set forth in my brief starting at paragraph 47 on page 39: Members of the Legislature are not, therefore, privileged in respect of all of their actions or statements. It is submitted that the privilege only attaches to those statements made in the Legislature, or which are necessary, incidental and essential to the performance of the members' functions or duties to the Legislature.

I examine the case of Stopforth and Jean-Pierre Goyer and I have a copy of that case in the brief and the excerpt from that case. What happened there was, you will recall, Mr. Goyer was involved in a problem in the House concerning the purchase of airplanes, long-range patrol aircraft, and there was a question of the financing of those aircraft. There was a contract made and it was not disclosed to the House at the time that there was a shortfall in the financing of the Department of National Defence and, therefore, it was a problem in the financing of the purchase of those aircraft. The aircraft company which had been engaged to manufacture these planes had at one time agreed verbally that they would give some assistance in the financing. That was not disclosed, and Mr. Stopforth, the plaintiff in this action, who had at the time been manager of the department and was in charge of one aspect of the purchase of these planes, was accused of not disclosing the statement made by the aircraft company earlier, that they would assist in the financing. Jean Goyer was severely criticized in the House over the matter and he made statements concerning Mr. Stopforth in the House to the effect that he, Mr. Stopforth, had been negligent and careless in the execution of his duties. Then he made the same statements outside the legislative chamber and was sued in an action for libel and slander. The question then arose as to whether or not that was an extension of parliamentary privilege.

This case is not reported. It's in the brief and the judgement of Mr. Justice Lieff says as follows—I'm quoting from page 39 of my brief:

"Roman is inapplicable to the case at bar. It was not an action for defamation. A bona fide statement of government policy concerning legislation as in Roman is quite a different matter from the facts in the case at bar where the defendant, in response to questions by reporters, made allegations of a serious nature against an individual. It is not necessary to determine whether the statement of the defendant sued upon herein was made in good faith because the statement was not one of government policy on a matter of public interest. It was not contained in the press release outlining government policy. It was merely a contemporaneous reply to journalists' questions. The fact that the defendant's answer was in substance the same as a statement which he had already read to the House is not in itself sufficient to bring it within the principle set forth in Roman.

"Accordingly, I find the statement sued upon was not an extension of a proceeding in Parliament and the defence of absolute privilege does not avail the defendant."

Of course, in the circumstances in this case, we don't even have repetition of anything that was made in the House. While Mr. Riddell made some reference to the fact that there was some elaboration on his part in the statements that he made, any statements that he made in the House, from my reading of Hansard, was concerning the number of police officers. He wasn't making any statements concerning the membership evidence of the UAW, or who wanted to join the UAW, or whether they had properly obtained their certification.

Indeed, that matter had come up earlier on March 13, in a statement that was made in the House by the honourable member, Mr. Kerr. He had apologized for statements that he had made to the effect that only half of the people at Fleck wanted to belong to the union. He claimed that he was misquoted. It was after that. But Mr. Riddell didn't make any statements.

I don't see, with all respect, that there was any justification for saying—even if there was an argument for an extension of privilege outside of the House—that there was anything said in the House that was further elaborated on outside of the House.

Another case I want to refer you to is the Clark and the Attorney General of Canada case, and this is referred to on page 41. It's a judgement of the Ontario High Court.

In that case it was stated by the court: "Nor do I consider that the real or essential functions of a member include a duty or right to release information to constituents. The cases indicate that the privilege is finite and I would not be justified in extending the privilege to cover information released to constituents."

[12:30]

You will recall in that case that Mr. Clark and several other members of the Conservative Party sought a declaration that they were entitled to release information under the atomic energy regulations to their constituents, to their solicitors, and otherwise. The ruling that was made by the then Chief Justice of the High Court was that they were entitled to the information and they could release it to one another but they couldn't release it, as the court said, to their constituents. The privilege didn't extend that far. The emphasis was on the real or essential functions of a member.

There is a good historical review in that case undertaken by the High Court of the development of parliamentary privilege. I am not going to bother the committee by going into the details of that. I will leave that for the committee members to read.

It is submitted that it is plainly the law of this jurisdiction since 1770. I qualify that by saying if we are to import the common law into this jurisdiction, the statute of 1770 in my submission would be imported, as in the reasons given by the labour relations board which were of the view that that act was part of the law of this province. If that is to be imported, then following that act it was clear that a member of the Legislature was fully accountable by civil process in the form of an action for libel and slander for any defamatory statements made by him, unless the statements were made in the Legislative Assembly or in connection with a proceeding in Parliament, such as it was made as a real or essential function of the person as a member of the House or assembly to make it.

My submission in the instant case is there is no evidence that Mr. Riddell was acting for or on behalf of the House or assembly when he was making the statements complained of. Indeed, it would be an extraordinary proposition to say that Mr. Riddell was acting on behalf of the House when, as alleged, he was engaged in making statements which, in my submission, can only be interpreted as being designed or calculated and having the effect of undermining the negotiations being conducted by the union and threatening its very existence, in other words, union-busting.

In my submission the statements, as I said in my brief, were made purely as an expression of his own personal views. I am reading from paragraph 51 on page 42 of my brief. As I am trying to move along as quickly as I can, I don't want to belabour a lot of these points any more than necessary. It is manifest that section 38 of the Legislative Assembly Act merely codifies the present English law with respect to parliamentary privilege and that such law does not prohibit the impleading of a member of Parliament during the time of privilege.

Prior to 1770, British law placed restrictions upon the impleading of members of Parliament in civil cases during the period from 40 days before the beginning of a session until 40 days after a dissolution or prorogation. In 1770, however, the British Parliament enacted the Parliamentary Privilege Act which provided, among other things, notwithstanding any privilege of Parliament, any civil action could be brought and prosecuted against a member of Parliament at any time, excepting only that no member could be arrested or detained in a civil matter during the time of privilege.

The text of the statute is set out in the brief: It is interesting that in the recitals it says: "Whereas the several laws heretofore made for restraining the privilege of Parliament are insufficient to obviate the inconveniences arising from the delay of suits by reason of privileges of Parliament, whereby the parties often lose the benefits of several terms, for the preventing of all delays . . ." It goes on to say that from and after June 24, 1770, "any person or persons shall and may, at any time, commence and prosecute any action or suit in any court of record, and no such action, suit or any other process or proceeding thereon shall at any time be impeached, stayed or delayed by or under colour or pretence of any privilege of Parliament."

I haven't read all of that, but it's significant that it also releases the privilege extended to the servants of a member of Parliament. I think it's absurd for anyone to say—I'm not

quite sure to what extent Mr. Bullbrook would go—that the statute of 1770 did not apply or that the statutes prior to that did not apply to limit parliamentary privilege. If they did not we would have the absurd situation where parliamentary privilege would extend to the servant of a member of this assembly. In other words, if Mr. Riddell had been accompanied by someone else who had also made statements, and that person was a servant of Mr. Riddell's he or she would also be protected. That just cannot be the law of this province.

As referred to on page 44, the purpose of this act was to prevent delay in the prosecution of civil actions against members although it did not affect the member's privilege with respect to proceedings in Parliament: ". . . the declared purpose of the act is to prevent delay in the bringing of those actions to which the act relates. The members of both Houses had long notoriously abused their privileges in respect of immunity of civil actions and arrest, which by ancient usage extended during the sitting of Parliament and for 40 days after every prorogation and 40 days before the next appointed meeting. It was to this delay in the commencement and prosecution of suits that the act was passed, and by clear implication referred only to those suits, subject to delay, ultimately enforceable."

That is a quotation from the judgement of the Privy Council in Re Parliamentary Privilege Act, and a copy of that is contained in the envelope that I have given to you. That was rather an important case and it is somewhat helpful in the situation before you.

In that case, a member of the House of Commons in England, wrote to the Paymaster General, who represented the Minister of Power in the Commons, complaining of a manner in which the London Electricity Board had invited tenders for the purchase of their scrap metal. He stated, among other things, that everyone in the industry considered the behaviour of the board a scandal which should be instantly rectified. That became the subject matter, ultimately, of an action against the member for libel and slander. The question arose as a matter of privilege in the House of Commons. A committee of the House was of the view that there was an extension of proceedings in Parliament—that was something that was made in a proceeding in Parliament and therefore was privileged. The committee referred that to the House of Commons and the Commons then under the Parliamentary Privilege Act referred it to the Privy Council for a decision with a simple question: Did the House of Commons have the authority to find in the face of the act of 1770 that the Bill of Rights Act of 1688 was still in effect and whether they were entitled to find that this was a proceeding in Parliament? The Privy Council found that the House had that authority, but made no ruling on the merits. When it went back to the House, the House by a majority vote found that it was not an extension of Parliament.

There is a considerable review in that case of the authorities and in that respect it is useful, but the House was of the view that even that was not an extension of the parliamentary privilege. I say a fortiori in the situation before you in this case, one looks in vain for any extension of parliamentary privilege.

I have set forth a number of other authorities in my factum. As I say, I'm reluctant to take the time to go through them in detail.

On page 45, I make the submission that when the Legislature of the province of Ontario was created by section 69 of the British North America Act the members of the Legislature were not thereby invested with any parliamentary privileges or immunities, although the Legislature was granted the authority by section 92 of that act to enact statutes to secure such privileges. What the Legislature has done is to enact the Legislative Assembly Act. That is the source, in my submission, of parliamentary privilege. I refer to the reference concerning legislative privilege, the judgement of the Ontario Court of Appeal. That case is contained in your brief, the brief of cases Kielley and Carson, Fielding and Thomas, and Landers and Woodworth.

In enacting section 38 of the Legislative Assembly Act the Ontario Legislature departed somewhat from the wording of the British act. Whereas the Parliamentary Privilege Act, 1770, restrains the arrest or imprisonment of any member during the time of privilege, the Ontario statute forbids the arrest, detention or molestation of a member during that period. I've already quoted that section. But I say that for all the reasons that I've given the interpretation of molestation is confined to the context in which it is used.

I go on to say, "This distinction, however, is one of form only and not one of substance. Despite the omission of the term molestation from the British statute, the common law of England still implies a prohibition against the molestation of any member during a time of privilege. This prohibition applies notwithstanding the provisions of the Parliamentary Privilege Act and it must therefore be presumed that it is not a molestation to bring a civil action against a member, even

during the time of privilege, unless such civil action has as its object the arrest or detention of the member.

In other words, what I'm saying there is that the Parliamentary Privilege Act of 1770 removed the impleader privileges from all members and their servants, therefore making it legitimate to sue a member of Parliament in all circumstances. It must be, in interpreting the word "molestation."

Molestation must therefore be something other than a civil action because a civil action was permitted.

Mr. Chairman: If I could just interject, the committee will rise at 1 p.m. and if we wish to pursue the matter it would then resume at approximately 3:30 p.m., following question period in the House. Mr. MacLean, you might be mindful of that if you want to choose a point at which you'd like to break. We should rise at 1 p.m.

Mr. MacLean: Perhaps this would be as good a time as any, Mr. Chairman.

Mr. Chairman: If that is agreeable then the committee will adjourn until after question period this afternoon and that, for others who might be interested, is usually around 3:30 p.m.

The committee recessed at 12:45 p.m.

SPEAKERS IN THIS ISSUE

Bolan, M. (Nipissing L)
Breaugh, M.; Chairman (Oshawa NDP)
MacDonald, D. C. (York South NDP)
Scrivener, M. (St. David PC)
Sterling, N. W. (Carleton-Grenville PC)

Witness:

MacLean, L. A., Counsel for members of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America.

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Procedural Affairs Committee
Proceedings against Member for
Huron-Middlesex (Mr. Riddell)

Second Session, 31st Parliament
Tuesday, June 20, 1978
Afternoon Sitting

Speaker: Honourable John E. Stokes
Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

The committee resumed at 4:02 p.m.

PROCEEDINGS AGAINST MEMBER FOR HURON-MIDDLESEX (MR. RIDDELL)

Mr. MacLean: Mr. Chairman, at the time of the recess, I was just dealing with the submissions on page 46 of my brief and just before leaving that I want to refer the committee to the case of Stourton and Stourton. That case is useful because we see the claim for parliamentary privilege being made by a peer who had been sued by her husband and a judgement obtained against him under the Married Woman's Property Act. At this point in time, the peer claimed parliamentary privilege where the wife applied for summons for leave to issue a writ of attachment. It was held by the court there that that was protected by parliamentary privilege. I think that's sort of a classic example of parliamentary privilege, as it effected a threat of the detention or imprisonment or arrest of a member.

Going on further with the meaning of "molestation," in section 38 of the Legislative Assembly Act, it is my submission that that section really does nothing more than codify the common law and that position is supported by the authorities. Going further into how the common law treated the meaning of molestation, as I said before, it's my submission that the board, in paragraph 26 of its decision, outlines in a very able way, generally the area of molestation at common law.

As I said before, there is some doubt whether or not the board is correct in saying that impleading a member was ever molestation. I'll refer you to May, 19th edition, on page 100, if I may read from that:

"The privilege of not being impleaded was formally maintained, as for instance during 8 Edward II by the issue of writs of supersedeas to the justices of assize to prevent actions from being maintained against members in their absence, by reason of their inability to defend their rights while in attendance upon the Parliament.

"At the beginning of the reign of James I another practice was adopted. Instead of resorting to writ of supersedeas the Speaker was ordered to stay suits by a letter to the judges, and sometimes by a warrant to the party also. The parties and their attorneys who commenced the actions were brought by the sergeant to the bar of the House."

It is open to question whether it was ever really characterized as molestation. But even assuming that it was, the fact that the Parliamentary Privilege Act of 1770 clearly removed the privilege of impleading a member for matters which were outside the Legislative Assembly is a clear demonstration that if molestation included impleading before that act, it didn't include it afterwards. The act clearly said that an action could be brought for any civil proceeding, and that wasn't subject to any claim or pretence of parliamentary privilege.

It is my submission that the interpretation imputed to the term of molestation by the prosecution interests in this reference are simply not borne out either by the common law or parliamentary precedence. It is submitted that none of the meanings ever imputed to the term "molestation" in any way supports the interpretation sought to be placed upon it by counsel for Mr. Riddell.

During the course of the proceedings, questions were put to witnesses which were of an accusatory nature—I am not saying that with any disrespect—implying that the person asking the questions thought something could be made of the fact that a case could be made for discriminatory treatment, that the action was brought against Mr. Riddell but not against the newspapers.

In my respectful submission, the fact that Mr. Riddell was sued and not the newspaper, or even if the newspaper had been joined, isn't going to change the situation. If the action is proper then it is the right of the plaintiff in such action to select who he is going to sue. There is no evidence, in my respectful submission, of any mala fides against Mr. Riddell, even if that were relevant in a proper law suit.

The evidence is that the action was commenced against him because he was the perpetrator. He was the one who was disseminating the information and he was the one being accused of unfair labour practices. There is a very good reason for selecting him.

There is also an imputation made, from the form of the questions asked, that perhaps the union or the union's counsel had overreacted, and was trying to muzzle Mr. Riddell. In my respectful submission there is no evidence either of that kind of mala fide, even if such were relevant.

The situation disclosed on the evidence is that there was a very volatile situation existing at Fleck Manufacturing. By the time Mr. Riddell injected himself into the situation it had advanced to a state where it was very explosive. The relationship was at this point in time very bitter, and it didn't look very optimistic in terms of obtaining a collective agreement.

The issue was union security, and the statements made by Mr. Riddell were such as to exacerbate that particular issue because he was in effect saying the union wasn't entitled to a union security position because it didn't represent the employees—the worst thing possible to have said in that type of situation. So, what then was wrong with the union and its counsel responding quickly to that sort of thing, because of the magnitude of the problem already existing and which was being exacerbated by the statements being made?

In my respectful submission, nothing turns on the quickness of the response. Surely it wouldn't be fair to say there was any overreaction, in that sense, even if that were material. But in my respectful submission, the plaintiff in any lawsuit becomes very concerned about the transgression of his rights and the remedies that he might get for their violation. So that considerations of that nature are simply not relevant. The point is, is the action itself a molestation? My submission is that there is no authority for that whatsoever. Any authority is to the contrary.

In my brief, starting on page 47 and following, I examined some of the areas of definition and I might just read on from that:

In ancient time, molestation was defined as "victimization of discriminatory action by the king or the executive." That's stated in May, page 76. In this context, the word was often used by the British House of Commons in their protest against injustices and illegalities on the part of the monarchy: ". . . and other of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted and diverse other charges have been laid and levied against your people in several counties," quoting from the Petition of Right in 1627.

We have the Commons protestation to the King, 1621, "that every member have freedom from all impeachment, imprisonment or molestation, other than by censure of the House itself, for or concerning any bill, speaking, reasoning, or declaring of any matter of business touching the Parliament or Parliament business."

As everyone knows, James I tore that out of the Commons journal. But the problem at that time was that James I was exacting retribution against members of the Commons who were not in his favour, by all kinds of devious ways of taxation and arrest and imprisonment, interference with the bodies of the people concerned. And that's the context in which, in my respectful submission, molestation was used at that time. We see throughout the authorities, as I indicated before, this meaning, in the context of freedom from arrest.

I don't want to quote all of these authorities, but going on with that, on page 48: [4:15]

The meaning and intended coverage of the privilege against "molestation," as described in May, dictates the conclusion that the privilege is limited to the protection from illegal acts and conduct which have the intent, purpose or effect of impairing, inhibiting or influencing the members in the performance of their duties in Parliament; or to protect them from illegal acts such as assault, abuse or libel against them for their performance or intended performance as members of Parliament.

Reading from May: "Privilege protects members of Parliament with the same sanction as well from illegal molestation as from the legal process of arrest. Either is equally a breach of privilege. But in this section attention will be concentrated on the privilege in its latter aspect. It is necessary to enlarge on breaches by way of molestation, which in their modern form of threats rather than infliction are reserved for the chapter on contempts."

The common law meaning of "molestation" was much broader, and I concede that. The common-law meaning included all these things that the board referred to—assaults, all kinds of abuse—but it was designed to interfere with the member in the performance of his duties in the House. I have that following, under the heading from May: "Molestation of Members while in the Execution of their Duties."

And May says: "It is a breach of privilege to molest a member of either House while attending such House or when coming to or going from it.

'The Commons, on 12 April 1733, and the Lords on 17 May 1765, resolved, 'That the assaulting, insulting or menacing any mem-

ber of this House, in his coming to or going from the House, or upon the account of his behaviour in Parliament, is a high infringement of the privilege of this House ... and to endeavour to compel members by force to declare themselves in favour of or against any proposition then depending or expected to be brought before the House."

That sort of thing is now dealt with, as I pointed out, in section 45 of the Legislative Assembly Act.

In my submission, all those common law acts of molestation that are spoken of in the authorities are included in section 45 as specific areas of complaint, specific areas which give rise to acts in contempt of Parliament and endow the assembly with the authority to punish such acts.

But that leaves the other meaning of "molestation." If I am correct in my submission, if the institution of an action constituted molestation before the act 1770, it could not constitute molestation after the act, because that act made actions legitimate; that act removed the impleading of a member of Parliament from the area of privilege. That was disposed of; so the weight of persuasion, in my submission, comes down heavily in favour of an interpretation of molestation which is ejusdem generis with arrest and detention, as I indicated before.

I now wish to deal with the argument raised yesterday by Mr. Bullbrook. I am not sure I understand all of the argument, but as I understand one of his positions it is that the public shouldn't complain about the exercise of parliamentary privilege; there is really no infringement of their rights, because, as he says, the period of disability doesn't run under the statute of limitations. For that proposition, he refers to a new text written by Williams—Limitation of Action—as his authority. I have read that authority and the authority is to the contrary. It doesn't stand for that at all.

On page 195 of Williams' Limitation of Action, chapter 15, he says this and I will read it:

"As will be seen below"—this is under the heading "'Postponements, Suspension and Extension"—"various methods are used to give a plaintiff respite on the operation of a limitation of actions act. The most common defence is postponement of the commencement of a limitation period while a plaintiff is suffering from some disability. The method which is not generally used in common law jurisdictions is that of suspension or interruption of the limitation period during its currency. The method which is used in common law jurisdictions but which is less usual is the extension of the period to accommodate a particular claim. Naturally this can only be done as a result of the judicially exercised discretion in individual cases. In any case, none of these methods will be applicable without," and I emphasize this, "without expressed statutory authority. Since the statutes are of general application exceptions now can only be made to their operation by statute."

Returning to page 53 of my brief, it must be remembered that when the British Parliament asserted its impunity from impleader during the time of privilege, a plaintiff's right of action was protected and preserved by virtue of the Privilege and Parliament Act, 1603, and the Parliamentary Privilege Act, 1700, which acts provided among other things that executions against members of Parliament could be renewed at the end of each session and that no cause of action could be statute barred or otherwise affected by the statute of limitations by reason of the privilege of Parliament.

In the instant case, there is no analogous Ontario statute delaying the operation of the six-week limitation period for the service of the notice of action contained in section 5(1) of the Libel and Slander Act and there is no analogous statute or analogous statutory provision in the Summary Convictions Act which extends the limitation period beyond six months for the initiation of an information under the Labour Relations Act. So that if this committee were to accept the interpretation of my submission advanced by counsel for Mr. Riddell, the practical result in this instance would be that the Legislature, having already been in session for six weeks since March 15, respective plaintiffs would be totally deprived of their cause of action through no fault of their own.

Section 5 of the Libel and Slander Act says, "No action for libel in a newspaper or in a broadcast lies unless the plaintiff has, within six weeks after the alleged libel has come to his knowledge, given to the defendant notice in writing specifying the matter complained thereof which shall be served in the same manner as a statement of claim or by delivering it to a grown-up person at the chief office of the defendant." Then on top of that, there is a three-month limitation period from the date of the origination of the cause of action to bring an action under the Libel and Slander Act. There's three months.

The more general result of the interpretation advanced by counsel for Mr. Riddell

would be that a member of the Legislature who was careful to limit any libelous comments to the beginning of any session would be immune from civil action, no matter how gross the libel, even if the libel were completely removed from any nexus with his duties or responsibilities as a member, nor would this result be limited to cases of libel and slander.

Other Ontario statutes also provide for a relatively short limitation period. Thus, it is possible to foresee a doctor escaping from liability for his medical negligence for a reason that the Legislature is in session for most or all of the relevant year; or an employer refusing to pay wages under the Master and Servant Act because the six-month limitation period overlaps the legislative session.

Further, under the Labour Relations Act the section passed and the procedures set up contemplate expedition in the processing of all matters before the Labour Relations Board because of the urgency of the subject matter. It would render most of the provisions of the Labour Relations Act, in my submission, completely nugatory if this interpretation were to prevail and a member of the Legislature were privileged from that sort of proceeding during the time of privilege.

The courts have recognized the urgent nature of proceedings under the Labour Relations Act. If I may give you the authority of the Supreme Court of Canada in this regard —it is not in my brief—in the case of the Bakery and Confectionery Workers International Union and Labour Relations Board of British Columbia reported in 1956, Dominion Law Report, Second Series, page 193. I refer particularly to the judgement of Mr. Justice Hall on page 201. While he is talking about a different type of proceeding, he says this:

"Whatever merit the arguments of the respondent had at the beginning of labour relations legislation, it seems to me that in the stage of industrial development now existing, it must be accepted that legislation to achieve industrial peace and to provide a forum for the quick determination of labour-management disputes is legislation in the public interest, beneficial to employee and employer, and not something to be whittled to a minimum of narrow interpretation in the face of the expressed will of the Legislature."

What he was stressing was the importance of expedition, and this runs through a lot of the cases that have come before the courts in this area. Urgency, immediate action, immediate disposition and adjudication is contemplated and required for any proper administration of the matters that come under the Labour Relations Act. So that's another reason.

Mr. Bullbrook dwelt at some length of time with the question as to whether or not a proceeding before the Ontario Labour Relations Board was civil or quasi-criminal. Mr. Chairman and members of the committee, it is inconsequential to us whether the committee considers it criminal or civil; in fact, let's assume it is civil. Yet it makes no difference; neither one is covered by the privilege.

I am not going to take up the time of the committee getting into the cases referred to by Mr. Bullbrook in that connection; but I say that in those cases, and it is well established by the Labour Relations Board, the proceedings dealing with applications for consent to prosecute are quasi-criminal. As I say, even if they are civil, it doesn't affect my argument.

It is a very serious matter and it cannot be disposed of in a quick and easy method as suggested by Mr. Bullbrook, with all respect to him. The effect of applying parliamentary privilege in this area would operate to constitute a serious infringement of civil rights, of public rights. In my respectful submission, it would be allowing the operation of parliamentary privilege in an area which is not necessary, not essential, to the performance of the parliamentary duties of the member.

[4:30]

Any interpretation that there is in existence parliamentary privilege in this area, the interpretation should be applied with that result in mind—and in my respectful submission, it warrants a strict interpretation. I think it's fair to say that in the development and in the whittling down of parliamentary privilege, which has occurred since sometime in 1700, the whittling down has been to protect public rights. It is an acknowledgement by various parliamentary bodies that they will not permit parliamentary privilege to be used for the selfish interest of a member to avoid legitimate action in the civil courts. It would only be applied where it is essential for the performance of a member's function in the house of the assembly.

The ramifications of imposing parliamentary privilege in the context of the case before you are extraordinary. One can envisage all kinds of problems that infringe on public rights. I'm not going to go through and catalogue all of them. The members of the committee can certainly understand what I'm referring to.

My submission is basically that privilege is a finite conception. I'm turning now to page 59 of my brief:

It is submitted that while there are sound and necessary reasons for the existence of parliamentary privilege, the scope and extent of the privilege is finite. It is not intended by such a privilege to confer civil immunity on a member of the House of Parliament for all civil wrongs committed by him against his constituents as private citizens during his term of office as a member merely because he happens to be a member. The ramifications of an all-inclusive privilege speak for themselves and would make a mockery of the civil rights of the constituents of the members and would be subversive and inimical to the democratic process itself. I make that proposition very seriously.

It is clear that when one traces the development of parliamentary privilege prior to and since 1770, the tendency has been to narrow rather than widen the scope of the privilege and to decrease rather than increase the infringement of parliamentary privilege on the civil rights of citizens. The privilege originated as a mechanism of parliamentary protection against the intrusions of the monarchy. Its purposes today are to ensure that members of the Legislative Assembly may conduct themselves freely and without fear in the performance of their parliamentary duties. The privilege attaches to the member in his capacity as a member of the house of assembly and not in his capacity as a private citizen.

If a member of the house of the assembly commits a tort—such as a defamation—in his personal capacity, the fact that he is also a member of the Legislative Assembly aggravates the tort and makes it more serious than it would be if he were not a member of Parliament. In this respect, the defamation committed by the member of the house of assembly receives much more public attention, much more dissemination and much more credibility than if the same statements were made by persons less known and not a member of the assembly.

There was some questions directed to witnesses during the course of the proceedings as to the circumstances that Mr. Riddell's name appeared in the notice of intent to bring an action and in the proceedings before the Ontario Labour Relations Board. The fact that he is identified as a member of the Legislative Assembly does not mean that the proceedings are being taken against him as a member—as a member, that is, acting on behalf of the Legislative Assembly. But it is something which exacerbates the tort if the person is a member of the provincial Parliament. As I submit, it makes the matter far more serious.

If you're going to put yourself in the position of, let's say, the picketing employees at Fleck and they hear the statements made by a responsible member of the provincial Parliament, statements which are in support of the company's position, how are they going to respond? They're going to respond in a way that this would be more convincing to them than if it were by some person who was completely unknown and somebody of lesser prestige.

In my respectful submission, it can't be said that because a person is named in a proceeding as an MPP that he's being sued as such, that he's being sued in his capacity as such. He loses his capacity when he steps outside of the legislative chamber unless he has embarked on something that has some reasonable nexus with what is happening in the legislative chamber.

As I said, in the same way that we know other members of the provincial Parliament have visited the Fleck plant and some have been active on the picket line, it can be said that somebody acting on the picket line, maybe carrying a sign—he's not there in his capacity as a member of the provincial parliament. He's not answerable, he's not there participating in that respect. If he commits torts, they're his own torts.

I don't think, Mr. Chairman and members of the committee, that I'm going to elaborate further on that. Certainly in the circumstances of this case, if Mr. Riddell had been there on a fact-gathering task, that's one thing. But he was there and making very active statements, accusatory statements, and he wasn't consulting the union or the union officials. He was aligning himself with one of the protagonists in the contest and taking the position of that protagonist to a point where the other protagonist, the union, was left with no recourse but to take proceedings to seek redress and to put a stop to what was going on.

There is a case that I would like to commend to the members of the committee. It sets forth a very clear and succinct historical review of parliamentary privilege. That is the case of Clark and Attorney General. That is contained in your brief. I'm not going to read it to you, but I would commend it to your attention. In that case, particularly from pages 611 to 618—the history is set forth dealing particularly with, of course, the situation from the federal government's point of view, the Parliament of Canada. The law, in my respectful submission, is the same except in so far as the difference in section 37 of the Legislative Assembly Act of Ontario. It's a very useful summary of the history and I hope

it will assist you in your consideration of the problems in this case.

There is one further case I would like to mention to you, particularly to your counsel. It is the Benyon and Evelyn case, and I will provide your counsel with a copy of this. It is reported in the 124 English Reports at page 614, and it has a bearing as well on the argument that was raised by Mr. Bullbrook in dealing with the effects of the statute of limitations. In this case—incidentally, it is dated 1664—and action was brought against a member of the House of Commons and it was claimed that the action was statute barred because it had run the time of the statute of limitations.

The argument that was raised by the plaintiff was that he couldn't bring the action because of parliamentary privilege. He was also concerned with the fact that the argument was made that from the death of Charles I to the restoration of Charles II the law died, if you can believe that, and there was a period of usurpation. The interesting thing about the case was that the court held that the action against the member of Parliament would not have violated privilege and was not suspended because of the period of usurpation.

If I may just read from the authority on page 618: "The next cause why I should have avoided the present debate about privilege of Parliament is this: it was said at the bar that it had been declared by the committee of the House of Commons of privileges, the last sessions, in case of a member of Parliament, that it was a breach of privilege to sue out and file an original against a member of Parliament, which is the point in question. I have inquired of some Parliament men of great note and learning, touching that resolution, who have denied to me that they know of any such."

The effect of that was that the mere bringing in an action against a member of the House of Commons was not a breach of parliamentary privilege. I'll leave that case with your counsel.

So for all of these reasons, Mr. Chairman and members of the committee, I respectfully submit that the committee recommend there has been no violation of parliamentary privilege because of the service of the documents in question. Thank you very much for your patience.

Mr. Chairman: Thank you very much, Mr. MacLean. I imagine there will be some questions from members of the committee, but I would like to have Mr. Kellock lead off with his questions.

[4:45]

Mr. Kellock: Thank you, Mr. Chairman. Mr. MacLean, my first question has to do with the last case you mentioned, Benyon and Evelyn. As I read the account of that case in May, it is an example of the dispute between Parliament and the courts as to who had the right to decide whether privilege existed or not, and it's main significance is an example of that conflict. In other words, it is not a parliamentary precedent, it is a decision of the court.

Mr. MacLean: Well, Mr. Kellock, I wouldn't disagree with you. The case is a very difficult case to read, but in parts of it at least it makes that statement. I will give you the case and you can read it yourself.

Mr. Kellock: The other housekeeping question I have is, on pages 47 and 48 of your brief, Mr. MacLean, you make two references to May. In the first, at page 47, subparagraph A, the citation is made "Page 76." What edition of May is that?

Mr. MacLean: I assume, Mr. Kellock, that it was the 19th edition.

Mr. Kellock: The 19th edition?

Mr. MacLean: Yes.

Mr. Kellock: I've got the 18th.

Mr. MacLean: There is a 19th. All these quotations are from the 19th edition, Mr. Kellock. A good amount of this material was gathered by Mr. McNamee, my student. I understand from him that it all came from the 19th edition and certainly my consultations have been to the 19th edition. That's what I am referring to, and the excerpts that I have left with you are from the 19th edition.

Mr. Kellock: In your submission, Mr. MacLean, is it open to the Legislative Assembly of Ontario to enact a statute which would provide in express language that a member of the House could not be sued during the sitting of the House or for any other prescribed period. Is it constitutionally open to the Legislature to do that?

Mr. MacLean: I would think that there is some question about that, Mr. Kellock. It would really depend upon the extent of the constitutional authority of the Legislature, and I wouldn't want to answer that as an all inclusive categorical answer without giving a lot of thought to it. There may be areas where that could be done.

Mr. Kellock: All right. Well, can I back up and lead up to that question? Would you agree or disagree that the privilege against being impleaded, historically and prior to any

interference by statute, was part and parcel of the privilege against arrest or molestation?

Mr. MacLean: I don't know whether it is that clear, Mr. Kellock, on the authorities. Certainly they were concerned with arrest and molestation and attachment resulting from a civil process. That's about as far as I think I could go in answering that question. I think there is some authority, and I referred to it in May, to the effect that a civil lawsuit for something done outside of the privileged precincts of the house of assembly was not a molestation but something that was stayed. It was subject to being stayed by whatever process was presented.

There are statements in de Smith, in the article that I have provided in my brief, from the Modern Law Review, which might lead to the conclusion that the privilege grew out of the privilege against arrest.

Mr. Kellock: The privilege against being impleaded grew out of the privilege against arrest?

Mr. MacLean: That's right.

Mr. Kellock: All right.

Mr. MacLean: There are some statements to that effect in this article written by de Smith in the Modern Law Review, volume 21, it's in the brief that I've submitted to you.

Mr. Kellock: If that is the case, and you make the statement at least once in your brief, that the Legislative Assembly Act of Ontario, what we're dealing with now, is to be taken as a codification of the common law.

Mr. MacLean: Yes.

Mr. Kellock: Would that codification include only the common law? Or would it include the common law as from time to time amended by statute, and if so, how far?

Mr. MacLean: I'm not clear on how far that would be, Mr. Kellock. I think that it certainly could be argued very persuasively that the act of 1770 formed part of the context of the common law that was in effect at the time when the Legislative Assembly of this province was constituted under the British North America Act. The reference would have been made to that body of the law, as well as, as I say, the statutes that were enacted at that time.

Mr. Kellock: Would you say, Mr. MacLean, to Mr. Bullbrook's submission that the word "molestation" as used in section 38 and repeated in section 45 and because of the list, if you like, of privileges contained in subsection 1 of section 45, molestation must mean something other than, for example, assault, insult, libel, obstruction threatening?

Mr. MacLean: I'm not sure that I understand the extent of Mr. Bullbrook's argument in that regard, but my argument is that the interpretation that molestation is connected with the same genus as arrest and detention in 38, that interpretation is supported by the fact that section 45 treats matters which would have fallen under customary definitions of molestation as matters that can be dealt with, and I'm referring to 45(1) and (2), assault, insult, and libel upon a member and so on, obstructing, that sort of thing. Subsection 10 deals with the freedom of speech privilege and section 37 and section 11 endow the assembly with the authority to deal with complaints concerning that arrest, detention or molestation.

In my submission, Mr. Kellock, the interpretation that I place on section 38 is far more tenable when one looks at that section in the context of sections 37 and 45. I am not sure that I understand Mr. Bullbrook's argument. As I understand it, Mr. Bullbrook seeks to snip the word "molestation" out of section 38, out of context and put some different meaning on it.

In my submission, that meaning just can't stand, it can't effect; if the Parliamentary Privilege Act of 1770 applies and there is no longer a freedom from impleader then that can't constitute molestation, that is, the impleader can't constitute molestation and was never intended to constitute molestation. I think it's proper to interpret the scope and application and meaning of molestation in section 38 in the context of the common law background, in the context of the statutes that were passed, that we have already referred to, and to look at that and to look at the context in which molestation appears, and also to look at section 45 and to see in that section the types of conduct that are set forth and distinguished from molestation, so that we have here a specific statutory meaning given to molestation which is different than at common law.

Mr. Kellock: Can you help me by telling me what it means? In other words, looking at section 45, does it have any independent significance or could the word be excised from subparagraph 11 without removing anything at all from the total section?

Mr. MacLean: Molestation, in my submission, is a word that's used ejusdem generis with arrest and detention and catches everything that's not included in arrest and detention, but dealing with the same sort of situation, the physical interference, the physical incarceration of the individual, something that wouldn't fall within arrest and

detention in that sense. Attachment, the threat of attachment, that sort of thing, and if we look back we get—

Mr. Kellock: Wouldn't that be covered by subparagraph 2: "Obstructing, threatening, or intending to force or intimidate a member of the assembly"? What else is meant—

Mr. MacLean: No, I don't think so. I don't think so. We're dealing in section 38, if you'll read section 38, and again you have to look at the context, "arrest, detention, or molestation for any cause or matter whatever of a civil nature," of a civil nature. This contemplates something in the nature of civil proceedings which result in the incarceration or physical interference, as I said from the authorities, with the body of the individual, the physical interference with the individual.

Mr. Kellock: Let me try one more time, Mr. MacLean: What activity can you see that would be covered by the use of the word "molestation" in either section 38 or section 45 that would not be covered if it was absent from the statute totally?

Mr. MacLean: Well, as I say, section 45(11), refers to the same thing. All we're dealing with in section 45(11) is the proceeding and the jurisdiction of the assembly to deal with that type of situation. We're concerned there with a proceeding. The difference that I see is that molestation is given a statutory meaning in the context of arrest and detention, a meaning far more restrictive than it was given at common law, and a meaning that does not include the mere bringing of a civil action, the initiation of a civil action. The initiaton of a civil action, in other words, does not constitute molestation within the meaning of section 38 until it gets to the point, for instance, where the member is being threatened with attachment or something of that nature.

This section was drafted at a time, perhaps, when detention or arrest for debt was something which was far more realistic than it is today, but today there are still proceedings for attachment in the civil courts and it still has an operative effect. It's something, in my submission, which can be attributed to the legislative concern for making sure that all matters in the genus of arrest and detention, anything of that nature, were covered and the member was protected from it.

[5:00]

This is something, of course, that finds its support in the common law. Freedom from arrest is a very important privilege. I think we find that now expressed in section 38, that part of the common law meaning, if you like. I think the full and operative effect of all the meaning of molestation is not clear; but I think the most reasonable interpretation consistent with the background of the common law and consistent with the sections in this act, is that molestation is connected with the same sort of thing as is contemplated by arrest and detention.

That is, as I say, supported by the particularization in section 45 of matters which at common law fell within the definition of molestation; that is, assault, insult, libel, obstructing, threatening, and so on. Those are specific matters that fall now within the area of complaints against the person for being in contempt of Parliament.

Mr. Kellock: Which are a little selective when you talk about common law. You are talking about common law as amended by certain statutes.

Mr. MacLean: I am talking about common law in the sense of the statutes as well, Mr. Kellock. I think it's fair to say that; that's the background, that's the common law as affected by the statutes.

Mr. Kellock: Then it is not really the common law. It's not decisional law.

Mr. MacLean: The definition of common law is something that perhaps we could quarrel about or argue about for a long time. That's the sense in which I am using the term common law, as affected by the statutes.

Mr. Chairman: Further questions from the committee?

Mr. MacDonald: I have one brief question. I'm rather puzzled. I was struck yesterday by rather a novel idea that was introduced by Mr. Bullbrook at the end of his statement, to the effect that the period of limitation, the statutory limitation, wouldn't begin unil after the period of privilege; namely, 20 days after the end of the session. He quoted from Williams. Did you say, in effect, that his quote was a total misquotation?

Mr. MacLean: The authority does not stand for that proposition, Mr. MacDonald. I'll read it again if it will help you.

Mr. Kellock: If I can help Mr. MacLean on this, Mr. MacDonald, I read that last night as well. The statement of Williams does not support the submission that Mr. Bullbrook made. There is no question about that.

Mr. Chairman: Further questions for Mr. MacLean? Thank you, Mr. MacLean. That ends the submission from both counsel. The question before the committee will now be, first of all, to order our business subsequent to this. Before you make that decision, I

should point out to you that the House will rise, supposedly on Friday, or if not then very early next week. Our counsel could do considerable work in the matter of researching precedents before he provides the committee with a report and perhaps a recommendation.

Mr. Sterling: Mr. Chairman, before you go on, and maybe before Mr. MacLean leaves, I am just wondering about the timing of the two things that are going on—the libel and slander suit and the Ontario Labour Relations Board consent hearing. When are they going to come on? When is the consent hearing to be heard? Is there a date set?

Mr. MacLean: On the application for consent, Mr. Sterling, there have been a number of hearings already, and it is proceeding. The next scheduled hearing date is Monday of next week. It is scheduled for three days next week. It has been proceeding during the course of these proceedings.

Mr. Sterling: I see. So it will be dealt with in total in the very near future then?

Mr. MacLean: I really can't say for sure. We would hope that it would be, but we have to accommodate ourselves to the board's scheduling and to whenever the board makes a decision. There is a six-month limitation period before an information can be laid under the Summary Convictions Act for a violation of the Labour Relations Act.

Mr. Sterling: So they have to act fairly fast?

Mr. MacLean: Yes, they do.

Mr. Chairman: To continue on the matter of ordering our business, we have some choices to make, quite frankly. The matter of research takes on added importance when one recognizes that in this House we do not have formal precedents other than rulings by a Speaker. This is the first occasion when a matter of privilege has been referred to a committee, for the very simple reason it is the first time under these rules that we have had a committee of this nature.

Whatever the committee decides will be used as precedent thereafter. I would suggest this matter of privilege has been given considerably more investigation over a lengthier period of time than any other matter that I am aware of in this House and perhaps even in most Houses. When we report to the House, it would seem necessary then to have a rather substantive report. If the House rises on Friday, it will pose some difficulty for us to prepare a document, even a draft document in that time, though Mr. Kellock has indicated he has staff prepared to work through the night so that you can look at a report tomorrow.

Secondly, it is a matter of no small concern to me that some members of the committee, all of whom have a vote on this matter, have not been in attendance throughout the entire hearing and, in particular, during the course of the final summations by counsel for both sides. It strikes me that the opportunity at least for them to peruse the Hansards ought to be presented before they can consider the thing.

So there are those problems. The technical matter of preparing a report and presenting it to the House and even the simple matter of having it printed is going to be difficult within the next two or three days. Perhaps more important than that is the matter that all members of the committee should be familiar with all presentations made to the committee and all the ramifications of that subsequently if they are to be used as precedent.

Mrs. Scrivener: May I ask a question for clarification, before you go forward? I understood Mr. Kellock is not going to prepare a report in the first instance, but is going to come back to us with a considered opinion?

Mr. Chairman: What the committee has asked Mr. Kellock—

Mrs. Scrivener: Are you separating these out or are you putting them together?

Mr. Chairman: I would put them together. I would see them in this sequence. First of all, he would prepare for the committee's deliberation a report on the precedents, as he sees them, and probably an opinion on the submissions that have been made by both sides in the issue. Further to that, his duty would be to write a draft report which would then be approved and recommended by the committee for the consideration of the House.

In addition to all of that, you should be aware that on the precedents that we can find in Westminster and other Parliaments, in matters of privilege when a committee reports of this nature, tradition says—and no more than tradition—that should it report no breach of privilege, there is no scheduling of debate. The Houses have accepted simply the decision of the committee. Should we report a breach of privilege with no recommendation of any punitive action, the same situation applies. The House generally has accepted what the committee has recommended.

We have been unable to find in recent times any occasion when any committee dealing with the matter of privilege recommended punitive action. That seemingly stopped about the time Charles, James and the guys stopped throwing them in the Tower.

That is roughly the scenario we would go through. As to the provision for meeting, I am aware some members have problems, so it would seem unrealistic to suggest we could meet tomorrow morning. It is conceivable that we could meet tomorrow afternoon and that we may have a draft report of some form, but it certainly would not be substantive.

The question before the committee now is how to order our business. Do you wish to meet tomorrow afternoon and, if so, for what purposes? You may simply want to meet with Mr. Kellock to provide him with some initial impressions and some direction in the preparing of such a report. On the other hand, you may wish to cease the proceedings at this point and give Mr. Kellock a rather substantial length of time to prepare such a report.

I would caution you that that means you will not report to the House by the end of this session in all probability and it will be set over until the fall. That is further complicated by the fact there will be one or two members of the committee at least who will be substituted for in a permanent way for the deliberations on boards, agencies and commissions in September. There is a small technicality of putting them back on here. It brings to the fore the whole question of—will you be prepared four months from now to deal with this matter? Will it be fresh in your minds, and is that a reasonable way for the committee to proceed? There are some of the many options that are open to you.

Mr. Kellock, I think it would be appropriate if you made a couple of comments because you would be pressed by the committee to do certain work.

Mr. Kellock: I confess my ignorance of the ability of the committee to sit except when Parliament is sitting. If the committee can sit any time this summer, the matter could be resolved, but if that is not a possibility, that is not a possibility. I can only say that the chairman has pointed out quite rightly that the usefulness of the document will be improved vastly if it is not prepared tonight. We can only do a rather superficial job with the time available.

Mrs. Scrivener: May I propose that we meet on Thursday after the question period to sit through concurrently with the House and into the evening, if required?

Mr. MacDonald: Just in that connection what about our regular meeting time Thursday morning?

Mr. Kellock: I am sorry, Mr. MacDonald, for what purpose? I have a personal commitment.

Mr. Chairman: There are many sides to it; but put very simply: do you now want to send your staff away to research for 12 hours, 18 hours, 24 hours or three months; what are the precedents that might be incurred in this? I wish I could offer you something in between that, but unfortunately, I can't.

Mr. Sterling: Let's deal with it now and give him a period of time in which to work up a report and come to some kind of decision. I don't think we can leave these parties too long in terms of their position and I think it would be disastrous to see committee members start changing around in terms of membership. We will just have to breach the problem of members who haven't been able to be here all the time. We will just have to hope they come to a logical decision in whatever they consider. We always face that problem in all committees.

Mrs. Scrivener: How long will Mr. Kellock take? You are not going to need four hours, are you? Maybe one hour, two hours? Ultimately when you are going to give us your opinion, are you going to need X number of hours or would we receive your opinion in a given length of time so that we could then, ourselves, go away, digest and come back to discuss?

Mr. Kellock: In order to provide the opinion I would like to provide, I first of all have to put the submissions of both counsel into some kind of framework. Mr. MacLean's was rather lengthy and references made to a lot of precedents were not discussed thoroughly.

That kind of process leads elsewhere. Reading one case inevitably leads to looking for another one. So in order to do that, we are not talking about hours, we are talking about days.

The timetable I mentioned to the chairman —if it is the wish of the committee to report to the House—was that a draft report would be prepared this evening to be debated and settled tomorrow, to be redone tomorrow night and edited Thursday morning. I can't be here after Thursday noon and I would think that in order to get the thing printed and into the House by Friday, it would have to be settled, approved and voted on by Thursday.

There is no question—there are some areas which may be useful and fruitful but which I will not be able to pursue in that time frame.

Mrs. Scrivener: That seems to me to be entirely too hasty, Mr. Chairman, and not giving counsel adequate time for consideration and deliberation and research as he requires it.

Mr. Chairman: Could I put it to you in this way? It strikes me that a fundamental question is—setting aside whether it physically can or can not at the moment—does this committee want to report this matter to the House by the end of this session? Could I try on a straw vote for size?

Mr. Sterling: Whether we want to or not depends on whether it can be done or not.

Mr. Chairman: It can be done in some form; whether it is desirable or not is a secondary question.

[5:15]

Mrs. Scrivener: I think it's too important to do such a hasty job.

Mr. Chairman: Could I get some comments from other members of the committee then?

Mr. MacDonald: I think the compromise is that we try it in the time frames Mr. Kellock indicated. If on Thursday we come to the conclusion we're going to come in with rather a botched and inadequate report because of the pressures of time, then we reconsider. But if you were to ask me, do I want this reported by the end of this week, my answer is yes. I would like it to be reported by the end of this week, but I don't know whether that's physically possible to do.

Mr. Kellock: Frankly, it won't be botched, Mr. MacDonald, but it won't be adequate either. There's no question about that.

Mr. Chairman: It really is a matter of whether we're sending staff away to work all night on something we won't use. It strikes me that's not a terribly tenable position to take. If it is the desire of the committee to make the attempt to report by Friday, then let's say so now, because it affects what we do in the next few days. Other comments?

Mrs. Scrivener: We don't know for sure that the House will rise on Friday.

Mr. Chairman: No, we don't.

Mrs. Scrivener: We think it will. I think perhaps we must make our own schedule so that we can bring in a report which is considered and dignified and important in terms of the very matter we're considering. It doesn't seem to me, in terms of Mr. Kellock's comments and what we know, that this can be done if we are to meet a Friday deadline.

Mr. Sterling: The problem is though that if the composition of the committee changes, it's got to change on Friday if we rise on Friday. Is that not correct?

Mr. Chairman: That's correct, and it will.

Mrs. Scrivener: Can we not have an extension for a—

Mr. Chairman: I don't think so.

Mr. Grande: Being one of the members who likely will not be here after this Friday, I would certainly like, if it's possible, to have a resolution of this before the session ends or the House prorogues.

Mr. Chairman: It won't prorogue.

Mr. MacDonald: May I ask a point of information? You're talking about the changes in personnel that are going to take place for the summer.

Mr. Chairman: No, the problem with this committee is that you cannot have substitution on the committee. It's a permanent substitution. Let me point out to you that there's a little technicality that could be exercised. Certain members of the House could be moved to this committee for the summer and when the House resumes again in the fall, other members could then permanently be put back on the committee.

Mr. MacDonald: That's what I mean.

Mr. Chairman: I'm saying that's possible. I'm saying also that I don't control what the House does or what the House leaders might propose.

Mr. MacDonald: That's really my point of information. It seems to me that if we opt for the longer period to give very serious consideration to this and we take into account the problem of having different personnel, maybe the only way you can resolve that is that the final resolution of it, our final report, is going to come only after the House meets again in October when the same members of the committee could be brought back.

Mr. Chairman: That's conceivable. We have no guarantee that would happen.

Mr. Kellock: There's the fact that it's practically a select committee for this purpose.

Mr. Chairman: If I could elaborate a little on the matter of sitting during the summer, it really is a matter of scheduling. We have agreed among the House leaders on a sitting schedule. It means this committee, as an example, has agreed it will not sit until after September 19. Unfortunately that leaves about three weeks, and we have booked three weeks of hearings on other matters during that time. That's aside from the small problem that we will not have the same personnel on the committee.

Mrs. Scrivener: Is there no chance that the committee could reconvene on Thursday week—that is, the first Thursday in July—with existing personnel as we have it now? Sometimes there is a usage in procedure that a retiring member of a board or a committee continues to serve until he is replaced.

Mr. Chairman: The problem is they would be replaced as of Friday. I would say to your proposal, though—it seems an attractive one—that there's virtually no chance of being able to do that. It sounds reasonable enough until you look at the six other committees that are sitting and their schedules.

Mrs. Scrivener: Do we have any idea how many members are retiring from this committee?

Mr. Chairman: One is all I'm aware of. There may be others.

Mrs. Scrivener: I was going to say I don't know of any others in our party. One is not so serious.

Mr. MacDonald: Following from what Mrs. Scrivener has just said, I don't know if we are so hidebound by tradition that it is impossible within a motion to say that the members of the committee until July 10 are going to be such-and-such, and after that are going to be such-and-such—and it's in the motion. That would mean that this committee with its present personnel could meet next week, Thursday, when I don't think any of the select committees are going to get into operation the last week of June.

The alternative procedure is that even next fall we would make a report saying that we have heard all the cases; it is very complex; we had only 36 or 48 or 72 hours or something to consider them and we couldn't do it; therefore, we request the House that this committee be reconstituted at the beginning of the next session with its existing personnel to finalize the report, even though they want to make other changes later—because you can make changes in committees at any point. The government House leader brings in a motion.

It seems to me you have two alternatives: that in the motion setting up the committee we permit this committee with its existing personnel to meet next week to finalize it. Alternatively, that this committee with its existing personnel meet in the very early part of the fall session to finalize this before we go on to anything else.

Mr. Haggery: May I ask a question? Do we have to submit it to the Legislature or to the Speaker?

Mr. Chairman: To the Legislature.

Mr. Haggerty: I can't find it here. I thought it might have been just the Speaker. If that was the case then, we could submit the report any time during this summer.

Mr. Chairman: Let me make this small distinction. Any committee duly constituted as a select committee may table a report in the Clerk's office when the House is not in session. This committee is not designated, as of now, a select committee for this matter but for another matter, with rather rigid terms of reference. So there would have to be some paperwork done between now and then. If the matter is of some concern in terms of presenting a report, of course, you can't do that when the House is not in session.

Mr. Haggerty: I was just wondering if the resolution motion was presented to the House or was directed to the Speaker.

Mr. Chairman: No. The matter was referred to us by the Legislature and it is our obligation to report back to the Legislature, not to the Speaker.

Mr. Sterling: Mr. Chairman, I am very reluctant to take the second proposal of Mr. MacDonald in terms of coming back in the fall and starting to discuss this thing again.

Mr. MacDonald: So am I.

Mr. Sterling: I would prefer to meet next week, if at all possible.

Mr. Chairman: I would point out to you that as of now it is not possible at all and—

Mr. MacDonald: Why?

Mr. Chairman: Because we have no knowledge that the House will be in session next week and that gives us no permission to sit.

Mr. Sterling Why cannot we keep the composition of this committee as it now exists until we sit in October, if there is only one substitution and it means one person will not be here on the ABC reviews in September?

Mr. Chairman: We can't do that.

Mr. MacDonald: There is a problem there, if I may put it in personal terms. I am chairman of the select committee on Hydro and I have to be off this committee during the summer period.

However, Mr. Chairman, I think it would be interesting to do a bit of pioneering in our procedures. I can't conceive of why a resolution could not be introduced by the government House leader which specified that this committee, with its existing personnel, would complete this item on its agenda at such meetings as are necessary next week and that following that, the personnel of the committee will be such-and-such to proceed with their other terms of reference as a select committee.

Mr. Chairman: The problem again would be, forgive me for saying so, procedural. The matter of who is on this committee and who is on other select committees will be done by motion in the House. The House

has no precedent for saying this committee or this motion will take effect July 15, June 10, or whatever. The Speaker will undoubtedly rule that there being no precedent, in the absence of a rule that allows it, that it is not in order. So it won't be in order.

Mr. MacDonald: Do you mean, if the government House leader brings in a motion saying the personnel of this committee will remain the same for purposes of completing this before the end of June, and that after the end of June the personnel of the committee will be such-and-such to proceed with the work that was envisaged for the summer? I can't conceive of why the Speaker would dare to suggest that was out of order. The government House leader has a right to bring in any motion he wants.

Mr. Chairman: I wouldn't go that far, and I would take the opposite point of view.

Mr. Haggerty: It is a rather important matter. The sooner we can get down to arriving at a decision, either in favour of or against whatever those proposals are, I think we should get on with it. I don't know how long it is going to take Mr. Kellock to bring in his viewpoints on matters raised by both counsels. When do you think you would have a summary prepared for the committee, Mr. Kellock? Two days?

Mr. Kellock: I can't answer that. I can prepare a summary in any time frame you give me. But I don't know when I can prepare the summary I want to prepare.

Mr. MacDonald: Could I put an alternative question to you? Are you free next week for a day or two or three if this committee were to schedule a meeting to hear your first report on Tuesday?

Mr. Kellock: Subject to getting an appeal in the Court of Appeal kicked over to the fall, which I would think I have a 50 per cent chance of doing. I am supposed to be in the Court of Appeal next week; but if I can get it kicked over to the fall, then I am fine.

Mr. Chairman: Could I put it to you that if the business were set aside for as short a period of time as three or four days, which is what we are really talking about for next week, is that sufficient time to make you feel comfortable?

Mr. Kellock: Much more comfortable.

Mr. Chairman: All things are possible in this world. I can think of some procedural techniques that might solve some of the problems. I understand the government House leader is on his way to the committee. We may seek his guidance in this matter. I would be much more comfortable as chairman of the committee if we at least had a day or two to read the Hansards and to give our own staff time to prepare their report. I am reluctant to think that all of this hinges on burning the midnight oil tonight and getting it in tomorrow, as much as I would like to do that. We will await the arrival of the government House leader. This is taking on a touch of drama that I find infectious at this late date.

Does any other member of the committee wish to make comments? My count of the opinions of the quorum still present on this matter is that three people would be prepared to advance this matter and deal with it before the end of this week. I take it there are two that are a little ambivalent about it. Is that reasonable?

Mr. Sterling: I had mentioned to you at first that my greatest desire would be to try to clean it up before the end of the week. However, after hearing Mr. Kellock talk in terms of what he could produce in that space of time, I don't think it does justice to both of the parties who have spent both time and a great deal of money in terms of making their presentations to us. I really don't think that it can be done in that time frame under any circumstances. We are going to have to go to another option in my view.

Mr. Chairman: Then it seems reasonable now to say that it is the committee's desire to have some time to have the staff prepare a report and to deliberate on the matter. Is that reasonable to say? Some time is defined as on into next week. The search now begins for a few techniques that will allow us to sit next week if the House is not in session.

Mr. Sterling: I think we can do that on Thursday, perhaps after we have a chance to look at the alternatives, can we not?

Mr. MacDonald: Haven't we got other business to do? Can't we meet Thursday morning as regularly scheduled?

Mr. Chairman: We do have other business to clean up by Thursday morning.

Mr. MacDonald: We could clean up that business and finalize this.

Mr. Chairman: Would it be agreeable that the committee will adjourn until Thursday at 10 a.m. at which time we will deal with a matter raised by Mr. MacDonald last week on which he gave notice? Then we will entertain further discussion on the scheduling of meetings. We will not meet tomorrow. I will attempt to find some pro-

cedural means that will allow the committee to continue its work next week, even if the House is not in session. Is that agreed?

Mr. Kellock: What am I doing then?

Mr. Chairman: In the interim, I am taking it that the committee has not requested its staff to present that report on Thursday morning. Counsel may start his work but he is not expected to present a report on Thursday.

Agreed.

The committee adjourned at 5:40 p.m.

SPEAKERS IN THIS ISSUE

Breaugh, M. (Oshawa NDP)
Grande, A. (Oakwood NDP)
Haggerty, R. (Erie L)
MacDonald, D. C. (York South NDP)
Scrivener, M. (St. David PC)
Sterling, N. W. (Carleton-Grenville PC)

Witness:
MacLean, L. A., Counsel for members of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)

Assisting the committee:
Kellock, B. H., Counsel for the Committee

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Procedural Affairs Committee

Proceedings against Member for Huron-Middlesex (Mr. Riddell)

Second Session, 31st Parliament

Thursday, June 22, 1978

Speaker: Honourable John E. Stokes

Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

The committee met at 10:19 a.m.

PROCEEDINGS AGAINST MEMBER FOR HURON-MIDDLESEX (MR. RIDDELL)

Mr. Chairman: The chair sees a quorum. We have scheduled meetings for next week and we are proceeding with means of constituting the committee; it has already been constituted as a select committee. We have a little work to do. There will be a motion presented to the House this afternoon, if that's necessary, to allow the committee to sit next week, and the schedule of meetings will be Tuesday at 2 and Thursday morning at 10.

Mr. Sterling: Mr. Chairman, I notice this is a confidential memorandum. I don't know whether I expect to read about it in the press tomorrow morning or not.

Mr. Chairman: It depends when you tell them. I think maybe the first thing we should do is—

Mr. Sterling: I'd like some direction from you as to how far this is going to go and what structures you expect the committee to place on the information we have in front of us.

Mr. Chairman: Okay. The committee has been provided with a draft report from your counsel; the report is not finalized, and it would be my view that the report itself has been tabled with individual members of the committee and that it is confidential until such time as the committee chooses to deal with it. That means, no one else other than committee members gets a copy of it.

In my brief look through I didn't see a great deal of confidential information. But it is the matter of a draft report not being for public consumption yet, and I would ask you to hold that in confidence.

Mr. Bolan: I haven't even looked at it, but what may be confidential in it is that there may be the beginning of an opinion. I don't know.

Mr. Kellock: The memorandum contains an opinion.

Mr. Bolan: Right. So in that case, I would urge the committee to remember that it is strictly confidential.

Mr. MacDonald: I'm not objecting to this but we discovered in the Hydro committee that we got into no problem by having total open meetings in all stages of considering our report. And, sure, the press were able to write stories at the embryonic or the incipient stage of the report. But so what? They usually get it anyway.

Mr. Bolan: But here we're dealing with the rights of an individual; I'm sorry, the rights of several individuals; the rights of all the proposed plaintiffs as well as the member.

Mr. MacDonald: We were dealing with the rights of the people of the whole of Ontario on a $7 billion contract—

Mr. Bolan: Oh yes, but the rights of individuals are different.

Mr. MacDonald: Okay, I'm not arguing the point; all I'm saying is that I was interested to find that although I went into it with a philosophic disposition to favour it and a practical disposition to wonder whether I was going to get into trouble, I found that there was no trouble.

Mr. Chairman: Well, perhaps I could offer some direction to the committee. In other instances, when privilege cases have been heard, Hansards are kept and are reported. There are occasions when the committees have decided not to keep it. That's basically the dividing line: if you want to have the meeting public, the technique is to have it fully reported in the Hansard. Other than that, I take it that several informal meetings are held; we have chosen not to do that—and I think for a good reason. The only reason that I suggest to you the matter of the document itself be kept confidential is that it was a document that was prepared with a good deal of haste and I have no indication from the committee that that is going to be your final conclusion. The committee has, in fact, not dealt with the document, and I'm not sure, as Mr. MacDonald says, that it does anybody any good to hold it in confidence. If you don't, I'm not sure I have much that I can do about it. But it seems to me you don't want to publish the judgement before the judgement is made, and that it would be sensible for me, from my point of view, to have the committee simply receive the document today. I have not heard any motions from anyone that the committee goes in camera or meets without the Hansard serv-

ices, and so I'm suggesting that on Tuesday, the document will be a matter of record. It will probably not be read into Hansard in its entirety, but certainly the debate on the document will be recorded by Hansard, and at that point it will be a matter of public record.

Mr. Bolan: Again, for my own general information: What is the usual procedure which committees have followed in the past when it comes to deliberating on whatever it is?

Mr. Chairman: Usually in select committees, and even on standing committees, when they prepare a formal report, they usually do move in camera to consider the writing of the report. I would caution you that in the oath of office you take there is a little clause which says that when you come into possession of documents that are not a matter of public record you do not release them. That's part of your oath of office and so there is an obligation on the members. I wouldn't want to be back here in the fall, hearing somebody else's privilege on releasing a document that you got before procedural affairs. It has been the tradition in this House that when reports are being prepared they are not public record until such time as they are formally presented to the House. That's been violated several times to my knowledge, most of the time by the members of the committee, as soon as the report is near finalized or is finalized.

Mr. Sterling: Well, I think it's a little hard to judge whether or not we should meet in camera on Tuesday or not, without having first looked through some of the information that's in front of me at this particular time, and I would be willing to discuss that on Tuesday afternoon.

Mr. Chairman: I'd like to keep my options open on that. The reason I suggest that is once you formally begin to go through the process it will be a matter of considerable concern and precedent, and people later will want to be able to follow the arguments back and forth in the preparation of the report, and that's of considerable value for us, in particular, because some members of this committee will not be here on Tuesday, and if you keep a Hansard they will at least have the opportunity to read the Hansards.

It will be my suggestion that you continue with the procedure that you kept to date; that is that you hold your meetings open and that you keep a Hansard of it. That debate will be not only interesting, but will form some considerable precedent for this House and in my view should be recorded. The only hesitation I have about this document is that it's a document that has been prepared by our counsel but has not been dealt with by the committee, and it just strikes me as being a little premature.

Mr. Kellock: Nor has it been proofread or corrected, and it contains many errors.

Mr. Chairman: The purpose of getting it here before this morning was to allow the committee members to have a look at it over the weekend.

Mr. Sterling: I have to congratulate our counsel on doing this for us in such a short period of time. I didn't expect to have it.

Mr. MacDonald: If all courts acted with such expedition we wouldn't have any backlog.

Mr. Chairman: We might even have a judicial system that works.

Mr. Grande: Mr. Chairman, on the question of whether the meetings next week are going to be open meetings or not, my opinion is that they ought to be open meetings. We have followed that policy from the very beginning; we have never gone into any closed meetings when the evidence was heard, and as far as I am concerned, not having read that document I don't think there is anything to hide from the public in terms of this question of privilege. It's been open all the way through. I can't conceive any reason for having closed meetings.

Mr. Bolan: The only thing I might remind Mr. Chairman of, as well as Mr. Grande, is that when a jury retires to deliberate a case it does so privately.

Mr. Chairman: Yes.

Mr. Bolan: I appreciate your remarks about precedents and perhaps others might want to see what we have done and change our follies, if they are deemed to be follies.

Mr. MacDonald: I'd just like to underline the chairman's earlier remarks; it is conceivable that the Hansard for this committee is going to be pored over by students, down through the years more than anything else that has ever gone on.

Mr. Chairman: Good Lord, I hope not.

Mr. MacDonald: I know it's a shattering thought, or a flattering thought, depending on how you want to look at it. Therefore the course of argument, if there's going to be any significant change in what the counsel recommends, if I may just make another brief comment—and Ray Haggerty is a member of the Hydro committee and he can alter it while I'm presenting if he thinks it's

not accurate—I think the point was our staff had no objection at all to their report to the committee and their recommendations being public, and quite frankly, on the uranium contracts all parties disagreed with them ultimately in the report.

Mr. Sterling: There's some problem there too, you see. When a court decision comes down, Mr. MacDonald, there is a written decision by the court and we're almost filling the function of a court in this particular committee, and when it comes forth with its report the decisions are written, perhaps in a majority judgement, and those who dissent dissent in written form, or a written presentation.

The problem is we never see in a written judgement any discussion that might or might have gone on during that period of time, or the misgivings that they might have had one way or the other. If we are to create precedents of any strength, and you have a lot of talk which sort of skirts around issues and goes one way or the other way, then it's going to be very difficult for people in the future to come to any conclusion about what we've done.

So it's a two-sided argument. You may have each member of the committee making a different statement about why he is supporting or not supporting the final recommendation, and so what does this do in the end? It doesn't create any kind of a precedent, so you defeat your purpose in some ways by having too many opinions about exactly what's gone on.

[10:30]

Mr. Bolan: I want to elaborate on what Mr. Sterling has said. What is going to be the precedent here, the reasons for the judgement, is what we're preparing. We are preparing a judgement. I don't think we're so much concerned about how we arrive at this judgement or how my opinion may be changed by Mr. MacDonald or Mr. Sterling's opinion may be changed by Mr. MacDonald. What we are basing it on are the facts, as presented to us, as well as the law which we have considered. The ultimate reasons why we have arrived at this conclusion are what is of significance and not necessarily so much what debate took place amongst us as to how we arrived at them.

Mr. MacDonald: I may be wrong but if I were sitting on a court of appeal, I think I would be intrigued to know what was the course of argument by all the judges in the lower court when they came to a split decision.

Mr. Bolan: That's what we heard over the past three days.

Mr. Chairman: Let's sum up. We will meet on Tuesday at 2 o'clock and on Thursday at 10 o'clock. As far as I'm concerned, a Hansard record will be kept and the meetings will be public, unless I hear a motion otherwise and that motion carries. On the matter of the draft report, I have offered my opinion. I have heard a couple of dissenting voices but I have not seen a motion nor heard a vote. In my view in that case, unless I see a motion otherwise, the report itself will be considered as confidential to the members of the committee until such time as it is formally tabled before the committee. That would be Tuesday at 2 o'clock.

We have one other matter to consider. We were given notice of a motion by Mr. MacDonald. I believe the members have copies of this. This refers to matters that were discussed by the committee in a meeting with the government and the opposition party House leaders. It concerns the matter of reporting to the House, who moves the report and who moves the debate.

Mr. MacDonald: For the record, just let me make a couple of points. I think this just sets down writing what was a unanimous agreement, sort of cabinet-style, as nobody was objecting, of the committee members plus the House leaders at a meeting on May 25. It doesn't change the rules of the House but it suggests procedures within the existing rules of the House and, therefore, it doesn't represent a piecemeal reporting on our job of this fall, namely, to review the whole provisional orders. Without it being reported to the House, the Speaker won't take cognizance of it.

Mr. Chairman: Do all members have a copy of this? It is simply written in motion form now.

Mr. MacDonald moves the following be reported to the House:

At the Thursday, May 25 meeting of the procedural affairs committee, the committee and the three attending House leaders agreed that:

1. At the suggestion of the government House leader, if the adoption of a committee report is moved during routine proceedings and further substantial debate is required, then the chairperson of the committee which presented the report shall move adjournment of the debate on the motion for adoption. That chairperson will subsequently meet with the House leaders to determine when the order to resume that debate will be called. The opposition House leaders sug-

gested that Thursday evening would best accommodate this type of business;

2. After a petition requesting a debate on an annual report and signed by 20 members is tabled with the Clerk, the Speaker informs the House of the reception of the petition and then assigns the report in question to a committee. The chairperson of the committee which has been designated to debate the report confers with his or her committee members in respect to the scheduling of the debate. The chairperson then meets with the House leaders at the earliest possible occasion to arrange the allocation of time and the ordering of business for the debate. The presentation of such a petition would most appropriately fall under routine proceedings in the period allocated for petitions.

Mr. Sterling: Have the House leaders got a copy of this? I don't know whether I have copies in my office or not. I can't recall receiving one.

Mr. Chairman: By letter?

Mr. Sterling: The original letter.

Mr. Chairman: The original letter went to the House leaders.

Mr. Sterling: They've seen the motion then?

Mr. MacDonald: May I suggest if there is any lingering doubt on the part of any spokesman for any party that he clear it with his House leader this afternoon—if he has any reservations. Presumably the darn thing goes on for debate. I don't see why that should be the case when they were all here and agreed to it in the first instance.

Mr. Sterling: I just don't know whether they've seen the written motion. In other words, I don't know what my House leader has agreed to or whether he would agree with the wording of this particular motion before us.

Mr. Chairman: This is not done in such a way, I should remind you, as to amend or alter the standing orders or the provisional standing orders of the House. This will be done in the form of a report to the House so the House would be aware of and would vote on that matter of the report. Thus the technicality of rewriting provisional orders is set aside, and this would be an expression in the form of a motion adopting a committee report by the House.

Mr. Sterling: Could we vote on this on Tuesday? I know we couldn't report to the House before it rises, but is there any urgency to reporting to the House before we rise?

Mr. Bolan: If Mr. Sterling wants to check it out with his House leader, he should be given that opportunity.

Mr. Chairman: Except we did that—

Mr. MacDonald: We did that last week.

Mr. Sterling: You mean he didn't see the written—

Mr. MacDonald: Let me come back to the point I made a moment ago. Why can't we report to the House and Mr. Sterling can check with his House leader between now and 2? If his House leader has any reservation, this won't be in effect until it's passed, so he has the right to intervene in the traditional way up until now, to put it on the order paper for debate. If he's happy with it, it's adopted.

Mr. Bolan: I don't care. I'm satisfied with it, but it's up to Mr. Sterling—

Mr. Chairman: The only comment I would make is that I think we've got ourselves in reverse order here, and we've done this before. I don't think we can continue, particularly when we are doing things like provisional rules, to run that routine of checking with the House leader and the caucus before we make a recommendation. I think the people on this committee are at some point in time going to have to say that the committee recommends to the House—and that we function as most other committees would function in that respect.

When it does go to the House, then of course the House leaders and the other members of the caucus are consulted for debating purposes and we would schedule debate. I would have some awkwardness, I tell you quite frankly, in going to the House leaders this afternoon if a debate is necessary and saying that we've got to have this debate today. I don't see the reason for that. On the other hand, if we go to the House leaders and make them aware of the report and ask, "Is that what you had agreed upon and is that satisfactory in terms of the report?" I would suggest that it would get unanimous consent and there would be no debate on it.

Mr. Bolan: No, but what you're doing though is putting the cart before the horse, if I may say so with the greatest of respect. If the House leaders don't agree with it, then you're inviting a debate in the House. Maybe all of this can be avoided if the House leader could be checked out beforehand.

Mr. Chairman: Except I want to make this fundamental point. This committee does not sit to serve the purposes of the House leaders; it sits to serve the purpose of the House. In this instance, I think we have agreement with the House leaders.

In the fall when we go through all of those provisional orders I think it's going to

be incredibly important that the members sit here as individual members of the House, looking at a set of rules under which the House will operate. Then our caucus considerations and the considerations of House leaders would be secondary.

In setting up the committee, it was carefully done and decided after debate that people like the government House leaders would not be on this committee for that reason. This committee would represent ordinary members of the House. It begs the argument that we're into right away between the Speaker's ruling and the findings of the committee. We wanted to have a committee of the House, ordinary members of the House, to sit and discuss procedures.

The House leaders have innumerable ways to do that. They order all of the business and they participate in things. The leaders of the party obviously have a great influence. The purpose of the exercise was to give to ordinary members of this House the opportunity to take some initiative to discuss procedures and to recommend to the House. The House of course always would be the ruling body in that instance. We don't have any great privilege in that regard. It's a matter of perspective sometimes.

Mr. Sterling: The only problem I find, when you run at these things—and this has nothing to do with the procedures in a formal sense, but in an informal sense it does really have something to do with the procedures. When you run at them piecemeal, in a very small way, I think there's a great reluctance to have a formal debate in the House on these matters. If there was some objection to a minor portion of this motion, maybe it could be rectified right here and there wouldn't be any problem in going to the House with that.

Mr. Chairman: Yes, I appreciate that.

Mr. Sterling: You may find it can work both ways, I guess. The House leader could stand up and say, "I want to adjourn the debate on this particular matter," so we're nowhere. Or he might let slide something which he doesn't feel was what the agreement might have been.

When we get to the stage of coming in with some comprehensive amendments to a great number of rules, I would imagine there will be a full-scale debate in the House on that matter. Then I think your arguments flow in terms of dealing just with the committee members here in finding what they consider fair and equitable. My concern is when the reports are made. I don't know if we've really had any significant debate on any of the reports that have been coming back from the committee. That's my only concern, in terms of having this thing looked at. That's why I've been reluctant to carry forward in terms of my caucus, and before committing us to any particular matter.

Mr. Chairman: Okay, you have a motion duly before you. You have been given a week's notice on it. It purports to be a motion which is not contentious because it reflects consensus—that seems to be open to some question. Could I have some discussion then on the motion itself?

Mr. Sterling: Mr. Chairman, I've had the opportunity, since our discussion, to check with the House leader. This is as he remembers the discussion and therefore I would support the motion at this time.

Mr. Chairman: All right, any further discussion on the motion?

Motion agreed to.

Mr. Chairman: Is it your desire that it be reported to the House this afternoon?

Mr. MacDonald: Yes, Mr. Chairman.

Mr. Chairman: Then we'll do so.

Mr. MacDonald: Flowing from the discussion we've just had, may I raise another point that we discussed earlier? I don't know that any action has been taken on it and I wonder if some should. At an earlier discussion we agreed, and I think this has been done, to circularize all members and ask them to make any report or any comments they like with regard to the provisional orders for our guidance when we get at it this fall.

You will recall that earlier I made a point that it might be useful to have each caucus discuss them so that you have a collective decision from the caucus. From the discussion we've just had, it seems to me that the people who were the appropriate ones to take the lead on this in their caucus are going to be the House leaders. In other words, some time before we get going this fall, the House leaders should see that sufficient time is left at one of their caucus meetings to discuss the provisional orders and that there will be a collective decision come in from each caucus.

That doesn't necessarily mean we won't take the view of member X and say that has precedence over what came in from any other caucus and we as a committee agree to it, but at least we will have some idea of what each caucus feels collectively. Would it be—

Mr. Chairman: I could invite the government House leader by letter to raise the

matter of a review of the provisional rules with each caucus and to provide to the committee a response in that regard—

Mr. MacDonald: That is in effect what I'm suggesting.

Mr. Chairman: All right. Peter, would you endeavour to draft the letter and get it out over the summer? I think you know we have circulated to all members of the House a letter inviting their response on the provisional rules; I have, I think, three or four people who took the time to write me an early response. When we get a significant number of them, in the course of the summer, we will put them all together and circulate them to the members of the committee.

Any further items of business?

The committee stands adjourned until Tuesday at 2.

The committee adjourned at 10:45 a.m.

SPEAKERS IN THIS ISSUE

Bolan, M. (Nipissing L)
Breaugh, M.; Chairman (Oshawa NDP)
Grande, A. (Oakwood NDP)
MacDonald, D. C. (York South NDP)
Sterling, N. W. (Carleton-Grenville PC)

Assisting the committee:
Kellock, B. H., counsel for the committee

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Procedural Affairs Committee
Proceedings against Member for
Huron-Middlesex (Mr. Riddell)

JUL 5 1978

Second Session, 31st Parliament
Tuesday, June 27, 1978

Speaker: Honourable John E. Stokes
Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

TUESDAY, JUNE 27, 1978

The committee met at 2:06 p.m.

PROCEEDINGS AGAINST MEMBER FOR HURON-MIDDLESEX (MR. RIDDELL)

Mr. Chairman: We have a quorum, so we will call the meeting to order. It is not clear whether we require both sessions or not. The committee has had a copy of the draft report over the weekend and a chance to peruse that. Mr. Kellock has prepared a slightly more perfect model with spelling errors and what not taken out of it. I think the way to proceed from here is to allow Mr. Kellock the opportunity to table this draft report formally with the committee, to elaborate on that and then to entertain some questions and some discussion. You may decide that you are ready for the questions this afternoon or you may decide that you would like to come back on Thursday and debate it further.

There are two members of the committee who are absent this afternoon who can be here on Thursday, but it would be in the hands of the committee.

Mr. MacDonald: I have just one point on the last thing. Presumably what we would see on Thursday is a full draft of our report to the House. Since that really is what posterity is going to see, and only the students will dig into the background, I would think that the report to the House is a fairly important document.

Mr. Chairman: I would anticipate that this afternoon the committee would hear counsel present his legal opinion in the form of the draft report and suggest corrections and alterations. I would think that you would want to have a second chance on Thursday to do the formalizing of the actual report to the House. Could we proceed in that manner? Is that agreeable on the understanding that through this we will have to have debate on it.

Mr. Bolan: I fully realize that. However, this has to do with the question of timing. Mr. Sterling asked how long we would expect to be. Without getting into the merits of the report which was filed by Mr. Kellock, I have gone over it and I am in the process of preparing my own draft report. I am on page nine of what will probably be about a 30-page report. I don't want to get into the merits of the argument or anything like that, but to give you one example, Mr. Kellock uses three lines to answer the question of whether it is quasi-criminal, criminal or civil. I have about seven pages on that.

I am not trying to be obstructionist as far as getting the report over by Friday or by Thursday is concerned. However, I am saying I have a rather exhaustive report which I will be presenting myself to the committee for their consideration. I merely throw this out at this time.

Mr. J. A. Taylor: Mr. Chairman, is there any discussion on the minority report?

Mr. Chairman: No.

Mr. J. A. Taylor: Then I was wondering how this fits in with the schedule of the committee.

Mr. Chairman: The committee has engaged a counsel who has drafted a report. If you will give us some time, in a few minutes he will table the draft copy of the report formally with the committee. We would then proceed to go through that draft copy and entertain debate back and forth. Any member of the committee is at liberty to move motions, whether they are one liners or 30-pagers. I take it that is what Mr. Bolan has in mind.

Mr. Bolan: That's right.

Mr. Chairman: He could move a motion in this committee that could consist of two words or three million words. That is his prerogative. The committee, of course, will then debate that. I would caution that we have scheduled two sittings this week. It is going to pose incredible problems if we go much further than that.

Mr. Bolan: I might say that these submissions which I will be making to the committee will be ready by noon tomorrow.

Mr. J. A. Taylor: These are your own submissions that you are making to the committee.

Mr. Bolan: That's right.

Mr. J. A. Taylor: They are in support, presumably of the position that you take on this.

Mr. Bolan: That's right. They are rather exhaustive. It is a review of the historical background and the constitutionality of the whole matter. These would be available by 12 o'clock tomorrow for the committee.

Mr. Chairman: I think the committee would appreciate that if you intend to put this out on Thursday that you would get it to us as soon as you could.

I would now ask Mr. Kellock to present to the committee his draft report. At this point in time, since he is presenting it to the committee and we are recording it in Hansard, we can release copies of this.

Mr. Kellock: Just to make the records clear, the only document that I have provided the committee with that could be called a draft report is confined to a statement of what I view to be the relevant facts. Of course, what the committee views to be the relevant facts is another question. I did not attempt to prepare a report that would deal with the precedents, both legal and parliamentary, which might be brought to bear by the committee to resolve the questions that the committee has to answer. That part of it I have put in the form of a draft memorandum which was given to members of the committee at the last meeting.

Since that time we have turned that draft into a firm opinion, if you like, corrected the citations, added some material that we didn't have time to put our hands on and review before the last meeting, and I have given the chairman this afternoon a copy of that opinion.

What you will have shortly before you—and I will ask for these to be distributed now—is a draft report that deals with the facts only and sets out the questions that I think the committee has to answer. The memorandum contains what I view to be the precedents that lead to the answers. It will be up to the committee as to what answers are adopted in the first place and it will be up to the committee also as to what kind of a report is to be produced.

There are at least two ways to go about it. One would be to, simply having found the facts, report that in the committee's opinion there was or was not a breach of privilege, and this memorandum is background material that could be an appendix to the report if the committee saw fit, or the report could be drafted at great length to include all or part of the memorandum. That will be up to the committee to decide once the issues have been resolved. If you like, Mr. Chairman, I can take the committee through this memorandum now.

You all now have before you a letter dated June 27 addressed to this committee. Paragraph one sets out the issues that also appear as part of the draft report. In my view, the question raised by the order of reference involves four separate parts. The first is whether or not the service of the notice of intended action, the intention to commence an action for defamation against Mr. Riddell by delivering a copy of that notice to his secretary at his parliamentary office at Queen's Park and a further service by mail of other related material, constituted a breach of Mr. Riddell's privilege or a contempt of the assembly.

The second is a like question, having to do with the application to prosecute or for leave to prosecute for an unfair labour practice under the Labour Relations Act.

The third question, which may be the most important, is whether or not the service of those two documents—or the delivery, if you like to use a non-technical word—constitute a breach of section 38 of the Legislative Assembly Act; and that, of course, calls for an interpretation of what section 38 means. Lastly, a sort of a basket question to bring into focus any other privilege that anyone might suggest is relevant and that might have been interfered with.

Now in order to deal with all these questions, it is necessary to go back in history and examine the statute and the facts and the claim for privilege in the light of the history of the Legislative Assembly Act and in the light of the history of parliamentary privilege in England, which, of course, is the fountainhead of all parliamentary privilege.

The first point is made in paragraph three, and that is that it is clear that the privileges enjoyed by the members of this House have a different foundation than those applicable to the British Parliament. The privileges of the members of the British Parliament grew out of ancient custom and usage and over a period of time became regarded as part of the English common law, but given a separate description which is shortened to the lex parliamenti.

[2:15]

On Confederation, the British North America Act expressly provided that members of the House of Commons and the Senate were entitled by legislation to define the privileges of those Houses and their members, so long as privileges created by that legislation did not extend beyond those enjoyed by members of Parliament at Westminster. It should be added as a footnote here that by this time the British Parliament

had taken the position that it was not entitled to extend its privileges beyond those that were then known; in other words, there had to be a statutory foundation of a common law foundation for the privileges enjoyed at Westminster. The House decided that after several hundred years of development they were not entitled to create any new privileges.

Parliament in Ottawa, acting under the British North America Act, then passed legislation defining their privileges to be the same as those enjoyed in England. That provision is to be found in the present Senate and House of Commons Act.

I am now on paragraph eight: "There is no express provision in the British North America Act concerning the privileges to be enjoyed by members of the provincial legislative assemblies; though it has been held" —and when I say held, held by courts—"that these assemblies may provide for corporate privileges by legislation. The section of the British North America Act which gives provincial assemblies the right to legislate on this subject matter is the first paragraph of section 92, the right to legislate for the amendment of provincial constitutions."

There are three cases cited on page four; we have photoprints of all the material here. I simply say that those three cases stand for that proposition. It has accordingly been held that this House and all provincial Houses do not have any inherent privileges apart from statute; that the common law applicable in this country did not bring with it the lex parliamenti.

I should correct what I said: there are inherent powers, but they are described, for example, in the Supreme Court of Canada decision on Landers and Woodworth, as "those that are necessary to prevent an immediate obstruction of the legislative business of those assemblies." In other words, to ensure the integrity of the legislative process.

In Landers and Woodworth a member had made a remark which the Speaker had indicated ought to be withdrawn or apologized for; the member refused to do so. It was held that there was no power to punish for that because the remark had been made, the House was continuing with its business and it wasn't as if he was carrying on a tirade or carrying on conduct which would prevent the House from functioning.

Mr. J. A. Taylor: Is it possible to ask a pertinent question? As I understand it, what you have said is that the powers of our own House of Commons, in terms of this matter of privilege, cannot exceed the powers of the British Parliament.

Mr. Kellock: That is correct.

Mr. J. A. Taylor: Do you see the provincial legislatures as being confined to a jurisdictional potency less than or equal to the Parliament of Canada, or is there scope for an enlargement of legislative privilege because of section 92 of the British North America Act?

Mr. Kellock: We will come to an opinion delivered by Sir John A. Macdonald—

Mr. MacDonald: Which should be persuasive.

Mr. Kellock: —which I tend to subscribe to. The question would arise in this way and I would then answer it: If the Legislative Assembly decided in its wisdom to pass a new statute setting forth all kinds of privileges not heretofore enjoyed either at Westminister or Ottawa—

Mr. J. A. Taylor: Not only that, but prohibited from enacting, from a jurisdictional point of view—

Mr. Kellock: For Ottawa.

Mr. J. A. Taylor: For Ottawa, right.

Mr. Kellock: Then the question would arise as to whether or not that was legislation that was intra vires or ultra vires this Legislature. My opinion would be that it would probably be ultra vires for this reason: When the Imperial Parliament enacted the original British North America Act, history tells us that they regarded the Parliament of Canada as the most important legislative body in the country. There are some statements to the effect that they regarded the provincial Legislatures as no more than glorified county councils.

In view of the fact that the right to define privilege is expressly mentioned with reference to Ottawa and not mentioned at all with respect to the legislative assemblies, I think it would be arguable—and I think the argument ought to be accepted—that it was not the intention of the Imperial Parliament to give or confer on provincial legislatures more power than had been expressly conferred on the House of Commons. That, I would think, would be an anomalous situation.

Mr. J. A. Taylor: Notwithstanding the elimination of criminal matters as being an area of federal responsibility; so you could eliminate any legislation that would conflict with that. That would cut it down considerably, but I'm thinking of an enlargement in terms of the property and civil rights jurisdictions.

Mr. Kellock: I'm not sure that I understand you, sir.

Mr. J. A. Taylor: What I'm saying simply is that you have the two facets of privilege. One might relate to the criminal aspect, which is not covered by privilege now, as I understand it, and which could not be enlarged provincially, because criminal law is a matter of federal jurisdiction in any event and I would think that any legislature enactment would run contrary to that overall jurisdiction under the British North America Act; so you eliminate that whole phase.

Dealing with the other aspect, of civil law—

Mr. Kellock: Can I just interject? I'm not sure that we're on the same wavelength. I take the view that the use of the phrase "criminal law" in a constitutional sense in Canada is a much different use of the phrase than one gets into in discussing whether there is privilege from civil actions or privilege from criminal or quasi-criminal. In other words, that doctrine arose in the United Kingdom where there is no constitutional difference between civil proceedings or criminal proceedings from the standpoint of the ability of the legislature to enact bylaws with respect thereto. That only becomes important in the Canadian constitutional sense.

I don't think that May, when he is talking about privilege from certain kinds of civil arrest as distinct from criminal arrest, is talking at all about the demarcation between what we regard as criminal law when we're talking about whether or not this House or Ottawa has the right to make laws with respect thereto. I think it's the same language, but it's two different concepts.

Mr. J. A. Taylor: I appreciate that if you're distinguishing privilege from criminal law, but I'm looking at it in a substantive sense; that is, whether you have divided jurisdiction as in Canada or singular jurisdiction as in Britain.

The point I am making, and would accept, is that in substance matters of a criminal nature are the purview of the federal government. What I'm saying is that any interference with that subject matter, whether it's exercised through legislative immunity or the frustration of prosecution, in my view would be contrary to the jurisdictional powers of the legislative assembly. So I dismiss that phase of privilege in so far as it would conflict with the overall power to legislate in terms of criminal law. In substance, we have curtailed the jurisdiction, if it was ever there, of the legislative assembly because you must dismiss then, if my thinking is correct, any privilege that might interfere with the normal administration of justice in the criminal sense.

However, the question that I put to you is that though I would acknowledge the elimination of privilege in that criminal sphere, is there not a potential for enlargement of privilege in so far as that privilege was an extension of provincial rights under the British North America Act as manifested in section 92? What you have said is that you don't think so. I'm just throwing that out. I don't know whether you address that problem or not. If you do address that problem I won't say any more. I'll wait until it arises.

Mr. Kellock: I think that's a good point, Mr. Taylor. We've come across no case in which the right to legislate with respect to privilege from a provincial viewpoint has been placed under the property and civil rights head of jurisdiction in the British North America Act. The Privy Council placed it squarely under 92(1). In other words, the amendment, from time to time, of the constitution. That's not to say that an argument couldn't be made that it ought to fall as well, in whole or in part, under the right to make laws in respect to property and civil rights within the province. All I can say is that this argument has not been made in any reported case that we've come across.

Mr. MacDonald: The point I'm rather curious to get clarified in my own mind is this, the section of the BNA Act which gave the federal Parliament in Canada the right to legislate with regard to parliamentary privilege stipulated that the parliamentary privilege couldn't exceed that which was in existence in the Imperial Parliament at that time. But going to the question which Jim Taylor asked, as to whether or not section 92 gave even greater powers to the legislative assemblies, am I not correct that the first effort at establishing parliamentary privilege in the Legislative Assembly in Ontario was in 1868 and it was disallowed by the federal government?

Mr. Kellock: That's right. I'm coming to that, Mr. MacDonald.

Mr. MacDonald: And presumably because it exceeded?

Mr. Kellock: That's bound up in the statement that we pulled in here. We didn't have it in the earlier memorandum. We found Sir John A's opinion between yesterday and today.

Mr. MacDonald: Oh, I see.

Mr. Kellock: You're quite right.

Mr. Sterling: It also includes the attitude of the Legislature at that time as to what they felt their rights were.

Mr. Kellock: That's right.

In any event, on page five I've set out an opinion authored by two gentlemen named Garrow and Shepherd, delivered in 1815 to the Right Honourable the Earl of Bathurst, who was then secretary for the colonies. A question was asked, the answer to which is given on page five.

[2:30]

"In answer to the second question, 'whether the assembly is entitled to all the privileges to which the House of Commons of the Imperial Parliament are entitled under their own peculiar law, the lex parliamenti," we beg to report that we think they are not so entitled.

"The House of Assembly of Upper Canada has not existed long enough to have established privileges by usage; the Act of Parliament has not delineated any, and we therefore conceive the outline to comprise and to be confined to such only as are directly and indispensably necessary to enable them," that is, the Legislative Assembly, "to perform the functions with which they are invested, and therefore may be fairly said to be incidental to their constitution.

"We mentioned some of these as examples, personal liberty . . . freedom from arrest in civil cases, a power to commit for such acts of contempt in the face of the House of Assembly as produce disturbance and interruption of their proceedings"—this precedes Landers but echoes the same view—"the freedom of debate upon the subject of the laws to be enacted or considered. They think also they would have the power of expelling a member convicted by any competent tribunal of a crime of an infamous nature . . . the right of regulating and ordering their own proceedings in their assembly consistently with the statute must necessarily be incident to them."

The reference to the statute in that quote is not the British North America Act. It is the Constitution Act. As indicated below, it is clear that members of the Imperial Parliament did not, in 1867, enjoy a general privilege which prevented the commencement and prosecution of civil actions against them. This fact would appear to indicate that such a privilege was not regarded as necessary to enable a legislative body to perform its functions. In other words, if the House of Commons could get along without it, it would be very difficult to argue that the legislative assembly of a province couldn't get along without it.

Since such immunity from civil proceedings cannot be an inherent privilege of a member of the legislative assembly, the questions raised by the terms of reference of a committee must be resolved by an application of the provisions of the Legislative Assembly Act.

In other words, what we say is that in our view the answer to the questions raised must be found in the Legislative Assembly Act, because resort to any inherent privilege is going to be found wanting.

Prior to Confederation, there appears to have been a complete absence of legislation defining the privileges of this House. However, the Legislature of the province of Canada appears to have accepted the limited nature of its privileges, as set out by Messrs. Garrow and Shepherd, and did not lay claim to any immunity from civil proceedings.

We simply make reference there to an early statute, an 1849 statute, which was enacted for quite separate purposes to set up the courts of Queen's Bench and Common Pleas and to prescribe among other things a form of writ of summons by which actions could be commenced. It is expressly stated in there that that form of writ is sufficient, whether you are suing an ordinary citizen or a person who is entitled to a parliamentary privilege, which clearly contemplates that, at that time, actions could be brought against members of the House, leaving aside the question as to whether proceedings against members of the House would lie for things that were said in the assembly, which has always been the subject matter of a well recognized privilege.

That statute went on to say: "Provided always and be it enacted that nothing in this act contained shall subject any person to arrest who by reason of any privileges, usage or otherwise, may now by law be exempt thereof."

We then come to the attempt in 1868 to enact a statute in this province on privileges. The Legislature chose to confer upon its members the same privileges enjoyed by their counterparts in Ottawa. That gave rise to the correspondence between Sir John A. Macdonald and the Attorney General for Ontario, John Sandfield Macdonald, and Britain. The upshot was that that statute was disallowed under section 90 of the British North America Act.

The following appears in Sir John A. Macdonald's opinion. We have only quoted part of it. The part that is obviously missing is the reason why he thought this statute was ultra vires the province. I can only say that it is not very clear to us why he thought it was ultra vires.

Mr. J. A. Taylor: It was never tested.

Mr. Kellock: It was never tested to this point.

Mr. Chairman: It may have been prepared later in the evening.

Mr. Kellock: That might be the case.

In any event, he touches upon what Mr. Taylor mentioned. "There is no clause in the Union Act similar to the 18th giving to the provincial legislatures power to define or establish their privileges and no general powers of legislation for the good government of the provinces are given to their legislatures. If it has any power to legislate on the matter at all, it seems to follow that while the general Parliament can, under the 18th clause, confer no greater privileges than those enjoyed by the Imperial House of Commons, the provincial legislature being bound by no such limitation might, if it were so disposed, confer upon itself and its members privileges in excess of those belonging to the House of Commons of England."

That, in its context, and we haven't set it all out, was a sort of in terrorem argument he was putting forth; if you don't disallow this, these provincial legislatures will run wild and purport to confer upon themselves all kinds of privileges.

John Sandfield Macdonald responded that the Ontario Legislature could have gone beyond the privileges just named and could have declared that members of the Legislature should be proceeded against in civil suits by a particular kind of process and that all suits against them should be tried in a particular court, or that no civil suit at all should be commenced or prosecuted against them during a session of the House, or for a certain time before or after.

"It does not follow that the Legislature of Ontario has the power to exercise greater authority than the House of Commons of Canada can exercise. The limitation placed by the Union Act upon the greater body must, no doubt, be held by just construction of the statute to operate by limitation upon the subordinate legislatures as well." In other words, he was saying that it would be surprising to him if it could be said that in construing the British North America Act, the Imperial Parliament intended to confer greater power on the provincial legislatures than they had expressly conferred on that of the Dominion.

In any event, the statute was disallowed and the next step in the piece is the decision of the Privy Council in Fielding and Thomas. We have quoted from the relevant part of the decision of the Privy Council in that case, delivered by the Lord Chancellor, Lord Halsbury. "The power to define privileges exists in provincial legislatures by reason of the right to amend the constitution"—its own constitution.

Following that, in 1870, Quebec enacted a statute which looks very much like our present Legislative Assembly Act. In 1876, Ontario followed suit. The relevant sections of that statute as compared to the sections of the existing act are set out in paragraph 19.

In paragraph 20 we make the point that "other than an action arising out of the proceedings of Parliament, it is clear that a civil action may be commenced or prosecuted against a member of Parliament, of either Canada or the United Kingdom, even while Parliament is sitting." There's not much dispute about that.

Then reference is made to the Parliamentary Privileges Act in England of 1700 which was discussed quite thoroughly in the submissions made to the committee. That provided expressly that the privilege theretofore existing against civil actions against members was not to be recognized in the future, providing, of course, that no member of Parliament could be arrested by reason of any civil as distinct from criminal process.

We have noted in paragraph 22 a comment by Professor S. A. De Smith who was a great authority on English constitutional law and administrative law. "The act of 1770 was the last of a series of four acts—the others were passed in 1700, 1703, and 1737—that were designed to abridge and finally to abolish the privilege against being impleaded that members of both Houses had claimed for themselves and for their servants. This privilege, which was first unequivocally asserted in the reign of Edward II, originally rested on the principle that persons attending Parliament should be free from molestation, a principle that now finds its primary expression in the privilege of freedom from arrest in civil matters."

We can now turn to the meaning of section 38 of the Legislative Assembly Act which is set out on page 13. We also set out on page 13 the form in which it originally appeared in the 1875-76 statute.

That 1875-76 statute was introduced by Sir Oliver Mowat, the then Premier and Attorney General. The debate is quite instructive, and this was contained in the earlier draft so I don't propose to read all of it; but it is, in my respectful opinion, abundantly clear that those who spoke in that debate on that bill were quite aware of the limitations on the privilege that were then in exis-

tence in England, and the word "molestation" was continued as part and parcel of the phrase: "arrest, detention and molestation," to cover cases that were not specified, but in the opinion of those who took part in the debate, and certainly in the opinion of the Premier, cases that were akin to cases involving actual physical detention.

Mowat was asked about the use of that word, and on page 17 he says that "they would not now govern"—those are old privileges—"and some of the privileges claimed had been abolished by express enactment since." He can only be talking there about British legislation because there wasn't any Ontario legislation. "Cases did occur which were not covered by the words 'arrest' or 'detention,' and as they should be covered in some way, 'molestation' was added. That word was used because it prevailed in other legislative enactments, and it was desirable to use words which were familiar in other countries rather than to adopt new words." Then there is a further reference on page 18, paragraph 27.

So we now come to the specific questions.

Mr. Bolan: Can I ask a specific question on this point? As a result of the act which was passed in 1886, is it fair to say that the Legislature went beyond the privileges which existed in England because of the inclusion of the word "molestation"?

Mr. Kellock: No.

Mr. Bolan: Because in England it restricts it to arrest and detention. Isn't that right?

Mr. Kellock: No, Mr. Bolan. If you look at May—and I include in that reference, from the first edition in 1814 or thereabouts, right down to the present time—the question of the privilege of being immune from civil actions is discussed as part and parcel of the privilege established by usage against arrest or molestation. As the reference from Professor De Smith indicates, the origins of the privilege against being impleaded are the same, and it was part and parcel, prior to 1770, of the privilege against arrest or molestation; so that that privilege continued after 1770, but it did not include, as it had before 1770, a blanket immunity from all civil actions.

Mr. Bolan: No, but it did not include the word "molestation" either.

Mr. Kellock: Yes, it still does. In the most recent edition of May you will find it discussed under chapter seven, I think it is.

Mr. Bolan: Does the act include the word "molestation," as does the act?

Mr. Kellock: There is no English act.

Mr. Bolan: There is an act which gave to individuals the right to sue members. That was the act of 1770.

Mr. Kellock: Yes, that's right.

Mr. Bolan: It specifically stated that a member can be impleaded.

Mr. Kellock: That's right.

Mr. Bolan: But does it not make specific reference to arrest and detention of a member? Doesn't the same act make specific reference to those words but it does not include the word "molestation" as we have it in section 38?

[2:45]

Mr. Kellock: Have we got the 1770 Act? We are getting to that, Mr. Bolan—

Mr. Bolan: On page 17 of your brief you referred to the act of 1770 and then said: "Nevertheless . . . nothing in this act shall extend . . . to be arrested or imprisoned upon any such suit or proceedings." The word "molestation" is left out.

Mr. Kellock: That's right. The privilege against molestation still exists in England and is part and parcel of the privilege against arrest. That section of the 1770 statute, in my view, was inserted for greater clarity, because the purpose of the statute was to say: "The privilege against being impleaded is gone. You may now sue your member of Parliament. But we don't want anybody to suggest that we have done away with that part of the privilege that prevents an MP from being arrested." That statute did not touch the rest of the privilege against molestation. The examples given in May were referred to by counsel in their submissions. They have to do with insulting members on their way to Westminster, organizing campaigns to write letters to them because of things that they are saying in the House, threatening them and so forth. That all still exists. What does not exist as part of the molestation privilege is the right of immunity against civil action.

I have here the first edition of May, published in 1844. This subject matter was then dealt with in chapter five, and the title of the chapter is "Freedom from Arrest or Molestation: Its Antiquity, Limits and Mode of Enforcement—Privilege of not being impleaded in civil actions: of not being liable to be summoned by subpoena or to serve on juries. Commitment of members by courts of justice. Privilege of witnesses and others and attendance on Parliament." So the freedom from arrest or molestation still exists.

Mr. J. A. Taylor: And that definition includes service of subpoenas?

Mr. Kellock: The section on subpoenas is very unsatisfying, Mr. Taylor. There seems to be no consistency at all in what the English House has done down through the years. There was one Ontario case—a judgement of Middleton's, I think—in which an MPP was summoned to appear as a witness and an application was made simply to excuse him until after the session; that order was made without any problem and no discussion of any privilege. So the question of subpoenas is not before us directly and the answer to it is very unclear.

Mr. J. A. Taylor: But the definition of molestation is before us and nobody discussed it subsequently. I assume I am somewhat tormented with the definition of molestation.

Mr. Kellock: As far as we have gone now, on page 18 of the opinion, I can say this: that the privilege against being impleaded was formerly—that is, pre-1770—part of the privilege against molestation; that it was amended, if you like, to exclude immunity from all civil actions to make it clear that arrest by reason of a civil process—debtor's prison, if you like—was to be preserved. So that, as part of the overall historic privilege against molestation, from 1770 forward that privilege did not include immunity from all civil actions, at least in England; and if you look at the debates in 1876 here, it seems clear that the persons responsible for the original statute here were well aware of that.

I think it is also clear that the people responsible for the enactment of the first Legislative Assembly Act in Ontario did not take the view that they were conferring upon themselves as much power as their brethren in Ottawa enjoyed, because their earlier attempts some nine years later had been struck down. Mowat indicated that he had introduced the bill in this form in this House because Quebec had got away with it and that that bill hadn't been disallowed.

It has been sometime since I read the section on subpoenas but apparently the custom, at least in 1844, was that it was permissible to serve a subpoena and then some negotiations between the member and the court took place. Invariably, the member was not called away from his legislative duties to appear as a witness. That is borne out by the Ontario case I made mention of.

Mr. J. A. Taylor: What troubled me when you mentioned that was whether or not that process of service of a subpoena would be included in the definition of molestation, not what the remedy might be. I am not speaking in terms of extinguishing maybe right of action or a need to serve on a jury or anything else. It is a question of whether that process would be deferred under privileges that could be interpreted as accompanying the generic definition of molestation. That's the part that troubles me—thinking, of course, in civil terms.

Mr. Kellock: I don't think there is any question that subpoenas fall under the same category of privileges dealt with as part of the molestation privilege.

Mr. J. A. Taylor: Serving on a jury is dealt with separately, isn't it? I think that we are excluded as members from serving on a jury under the Jurors Act or some other statute.

Mr. Kellock: That was originally under molestation as well.

Mr. J. A. Taylor: That's what concerns me in terms of the meaning of molestation. If it means that you can't be served with a jury notice, then on the same basis does it mean that you can't be served with notice of intention to institute some sort of proceedings? I think, at least to me, that seems to be an area we would have to struggle with.

Mr. Kellock: Perhaps I can come to the end and then come back because there is a little more material that bears on those questions.

The first question I deal with is the geographical location of the delivery, i.e., at Mr. Riddell's parliamentary office. There is no question that it is a contempt of the British House to serve a civil process within the precincts of Parliament, or to summon a member from the chamber to so serve him. There is a number of reports, but I have referred to one in which that is made quite clear.

It should also be mentioned in passing that the documents that were "served" here were not required to be served personally, because in the one case, section 5 of the Libel and Slander Act permits the delivery of the notice to any adult person at the proposed defendant's chief office, and the regulations that apply to the labour board permit service by mail at a principal office or business address.

Mr. J. A. Taylor: How important is that, the distinction between personal service and substitutional service, if I may put it that way? What difference in substance would there be in leaving a service on the member or his secretary? I'm talking about substance now, not just a matter of who delivers the post.

Mr. Kellock: In the report that I have referred to, what happened was that some solicitor's clerk attended at Westminister and

asked for an MP. When he came out, he gave him a copy of a writ with a covering letter from the solicitor saying: "This action has been instituted. Would you please let us know the name of your solicitors whom we might effect service upon." In other words: "We're not really serving this document; we're just giving you notice that the proceeding has been commenced and we have to serve it formally. Please tell us who your solicitors are so we can do that."

There was great discussion as to whether or not that was or was not service. It was the view, as I recall it—it was at least the view of some of the people on the committee —that simple notification of that kind might not be a breach of the privilege that prevented actual physical service of the document within the precincts of Parliament.

As you will see, I don't think it matters in this case at all whether it was a writ, or whether it was notice of a writ, or whether it was just simply a letter saying: "We sued you and we want to serve you sometime." I don't think it'll make any difference in the context of this case.

Mr. J. A. Taylor: Whether it was served on a member or on the secretary of the member?

Mr. Kellock: That's right.

Mr. J. A. Taylor: Presumably that's of no substance.

Mr. Kellock: Except that the member in question wasn't required to come out of the chamber to get the document.

Mr. J. A. Taylor: I appreciate that, and not only that, but we find that the physical office of the member is not within the ambit of the Speaker's jurisdiction. If that's a finding, and I gather it is, I was wondering whether it would make any difference whether it was service directly on a member when he was in his office or on the member's secretary if she was in that office.

Mr. Kellock: I think if there was a corresponding privilege here against being served within the precincts of the House, and a document was formally served, personally, within the precincts of the House, that would be one thing. On the other hand, notice of action which is not formally served might even in England be acceptable if it's simply left with the secretary of a member. I'm saying I don't think that is necessary to the ultimate decision, because as you have correctly anticipated, the problem is that it would appear that the documents were delivered or served or whatever you want to call it in an area that was not at the revelant time under the Speaker's control.

We have simply said with respect to this, service of proceedings or notices or any other document within the precincts of the House, that is not specifically spelled out in the Legislative Assembly Act—perhaps it should be, but it is not now—we take the view that it is not a privilege that would qualify under the Landers and Woodworth doctrine as being absolutely essential to the continuation of the business. Consequently, probably no such privilege exists, even if Mr. Riddell had been personally served in his office.

They then go on to indicate that whatever might have been the result in the absence of statute, the Legislature has seen fit in section 93 of the statute to declare that such parts of the legislative building as may be designated by the Lieutenant Governor in Council in addition to the legislative chamber shall be under the control of the Speaker and the order in council shall be laid before the assembly. There is clear recognition that the legislative chamber alone is within the Speaker's control unless there is an order in council.

[3:00]

In my opinion, it doesn't matter what area of this facility was historically under the Speaker's control, the Legislature saw fit to define it, and that might have been an expansion or a contraction. That would seem to be irrelevant at this point because we now have clear unambiguous language indicating what parts of the building are within the Speaker's control.

Mr. Haggerty: I can tell you one thing: the offices are under the control of the Speaker because he ordered me out of the offices on the third floor into another one, and I said: "You would have to take me to court to move me." And he said: "I'll do that." He said, "I have control of it."

Mr. J. A. Taylor: Should have published it as an order in council.

Mr. Haggerty: Perhaps I was taken advantage of over that.

Mr. MacDonald: The Speaker was acting illegally.

Mr. Kellock: He might have been in some difficulty.

Mr. Haggerty: I don't know, I think I'll go back and take my original office then, Don, and he will have to move three members downstairs.

Mr. Kellock: We take the view that because an order in council is necessary that the Regulations Act had to be complied with and the statute had to be complied with. That is, the order had to be laid before Parliament.

It wasn't, and consequently, in our view, that order in council has no force at all.

We are also told—and I think Mr. Johnson gave evidence before the committee to this effect—that prior to section 93 of the present act, it was considered the chamber and perhaps the adjacent lobbies were within the Speaker's control, but not the offices. So that whichever way you go it would seem that that location—i.e., Mr. Riddell's office—was not within the jurisdiction of the Speaker.

The next question, and as I said earlier, probably the most important, is whether or not the commencement of a civil action or the launching of an application of leave to prosecute, and the resulting delivery of documents, constitute a molestation within the meaning of section 38.

If one were to ignore the Parliamentary Privilege Act of 1770, and assume that members, or a member, of the UK Parliament still enjoyed the privilege against being impleaded in 1876, it could be argued that the use of the phrase "arrest, detention or molestation" in the 1870 act was meant to apply such a privilege in Ontario. However, the actual scope of the privilege in the United Kingdom was well known to the members of the Legislative Assembly taking part in the debate on the 1876 act, and it did not include immunity from civil actions, and had not for over a century.

The historical setting of a legislative enactment may be taken into account by courts in construing that statute. I simply quote from an English case for that proposition. When construing its own statutes, a fortiori, a committee of the Legislature should pay attention to the historical circumstances giving rise to the enactment. Similarly, such a committee should not ignore the intent of the Legislature, indicated by its debates, at the time of the passing of the statute.

I just digress to say that courts have been very loath to look at debates in Parliament to construe statutes. I have never really understood why. They seem to depart from that rule when it suits them. For example, the anti-inflation reference was replete with material of that kind. But this body is not bound by that rule, and it would seem to me that it should not be when construing its own statutes; but that is up to the committee.

There is a presumption against the Legislature intending what is inconvenient or unreasonable. Now it may be said by some—and it is certainly a point that has to be considered—that to provide a blanket immunity from all civil suits in favour of all MPPs during a protracted period of time would certainly be inconvenient to those who were entitled to redress otherwise at law, and some might even say that was unreasonable.

In this respect it must be recognized that the Parliamentary Privilege Act of 1770 was passed to terminate abuses of a privilege. If molestation is taken to prevent the commencement or prosecution of all civil actions against members of the Legislative Assembly during the sitting of the House, and for 20 days prior to and 20 days after a session, then all types of civil actions would be prohibited during this period of time, including actions arising from automobile accidents, breaches of contract, or division of property on divorce, and many others you can think of.

Aside from any other hardships, such a prohibition might cause a delay beyond the limitation period for the action, eliminating any possibility of suit and any possibility of remedy in favour of an otherwise innocent plaintiff.

Another principle of statutory construction to be applied is that of noscitur a sociis, or the ejusdem generis rule. That simply means that where you find three words used in conjunction with one another they each take on colour from the fact that they are used together. That was the argument that was made to the committee by Mr. MacLean; it is certainly founded on principle and I've set out the reference.

Consequently, the use of the word "molestation" in conjunction with the words "arrest" and "detention" would tend to restrict the meaning of the word "molestation" to a meaning analogous to "detention" or "arrest." This would limit any extension of the privilege, leaving "molestation" as a catch-all word as implied by Sir Oliver Mowat. It might include a privilege against obeying a subpoena to serve as a witness.

Further, the expressio unius exclusio alterius rule of construction holds that "mention of one or more things of a particular class may be regarded as silently excluding all other members of the class . . . " That was the point made with respect to the express reference in section 37 of civil actions. There is no ambiguity, or any difficulty, in construing section 37, which says that no action may be brought against any member for anything that he brings by petition before the House, or says in the House or before a committee of the House.

By this rule, the express prohibition in section 37 against civil actions arising from statements made before the assembly or a committee thereof would lead to the conclusion that those are the only civil actions

which may not be brought. By legislating a privilege specifically to proscribe such civil actions, it may be presumed that no further immunity from civil suits exists, in the absence of clearly stated provision elsewhere in the act and, of course, there aren't any.

It therefore appears that section 38 does not create a privilege against the institution of any civil proceedings, but merely against the actual interference with the person of a member, such as by arrest or attachment. Attachment is not expressly used in the phrase "arrest, detention or molestation." An attachment is what happens to you if, for example, you attend on a pre-trial examination, you're asked certain questions and you refuse to answer them. If it is subsequently determined by the court that you ought to have answered them, the normal order is that you reattend and answer them. If you still refuse, then you are in contempt of court and are attached —physically taken—and put in a place of incarceration until you're ready to purge your contempt. So that could be an example of a molestation within the intendment of the act and within what Sir Oliver Mowat was talking about when he brought the bill in originally.

It therefore appears that section 38 does not create a privilege against the institution of any civil proceedings, but merely against the actual interference with the person of a member. Thus, the commencement of the two proceedings in question, as well as the resulting delivery of documents, does not constitute a breach of section 38 of the Legislative Assembly Act.

Further, if an application for leave to prosecute pursuant to the Labour Relations Act is to be regarded as quasi-criminal, any privilege to be implied by section 38 could not be invoked. There has always been a distinction made between arrests for a civil cause and those for criminal charges. As noted by May, the distinction rests with very different rationale for the two branches of law, and parliamentary privilege was always intended only to prevent private interference with public duties. Any hint of danger to the public at large overrides the need to protect members of the Legislature in their public capacities. To quote from May:

"The development of the privilege has shown a tendency to confine it more narrowly to cases of a civil character and to exclude not only every kind of criminal case, but also cases which, while not strictly criminal, partake more of a criminal than of a civil character. This development is in conformity with the principle laid down by the Commons in a conference with the Lords in 1641: 'Privilege of Parliament is granted in regard to the service of the Commonwealth and is not to be used to the danger of the Commonwealth.' "

It is in that context that I drew the committee's attention to the fact that in Canada "criminal law" has a very different meaning, when you're talking constitutionally, in my view, than it has when you are discussing the question of parliamentary privilege and, therefore, what I would call quasi-criminal proceedings; that is, prosecutions for the breach of provincial statutes. Some provincial statutes, like the Highway Traffic Act, provide for offences that are very close to cases provided for by the Criminal Code, and the courts have danced a very fine line in upholding the validity of that kind of legislation. But that, I would think, would be a quasi-criminal proceeding within the meaning of the editors of May.

Mr. J. A. Taylor: How do you relate that to the distinction we make between criminal matters—we are excluding them and not discussing them; there's no question about that in my mind—and civil matters? Let's come down to where they are more petty in nature, such as a municipal licensing bylaw or a bylaw that prohibits your dog running at large. You're summoned, convicted and fined $10 or, if you don't pay the fine, you go to jail for three days. That's pretty minor. You'd say that is quasi-criminal. Where does that come down? Do you put quasi-criminal with criminal and say that's not the type of protection of privilege that is contemplated in terms of a member's privelege or do you get tied up in the courts on that type of thing?

Mr. Kellock: To resolve that question, if it had to be resolved, would be extremely difficult. It would be a project of enormous proportions all in itself. If you ignore the constitutional distinction, there doesn't seem to be any place to go to except to look at the form of the proceeding. If it is brought in the name of the Queen and the result is a monetary penalty or incarceration, to me that is quasi-criminal. Maybe if we were proceeding under the Vicious Dogs Act, the result of which is that your dog is destroyed, it may not be quasi-criminal. Certainly, in a breach of the Construction Safety Act, let's say, that has very serious consequences and where very large fines can be imposed, I don't know where you can possibly draw the line logically.

If it were necessary—and as presently advised I don't think it is—we could canvass the English jurisprudence and find out exactly what line of demarcation has been

established there. It is certainly not very clear from May. I don't think you could say that because it's a breach of a by-law it's not to be regarded as quasi-criminal. Some pretty stringent and fairly serious regulations have been made in the form of bylaws under the delegated authority from this House. Apartment buildings worth millions of dollars have been ordered to be torn down and that kind of thing. If it was simply an order in a civil action to prevent the breach of a bylaw, that's one thing; but if it's a prosecution, the penalty for which is fine or imprisonment, that has the appearance and the earmarks of a quasi-criminal proceeding.

Mr. J. A. Taylor: The reason I mention this is that you dismiss summarily the notice of intention or leave to prosecute under the Labour Relations Act as a matter that is quasi-criminal. I don't follow that. Unless we know what quasi-criminal is, it may or may not fall within that area of parliamentary legislative privilege. The counsel for Mr. Riddell makes some submission in regard to that and it may be relevant.

Mr. Kellock: I don't know if you were here, Mr. Taylor, but I asked him for a test that one could apply with some consistency. He wasn't able to give me one. That's the difficulty I had. If you ignore the constitutional breakdown, I don't know where you go from there, except to look at the form of the proceedings and the consequences at the end of those proceedings.

Mr. Bolan: Isn't that all the more reason to go to Parliament and to section 91 of the BNA Act which states that the federal government shall have jurisdiction over the question of crime? You are into the question of the real separation between the province and the federal government; they define what is criminal law. Don't you think when you speak of a crime in the act—

[3:15]

Mr. Kellock: We also have to deal with quasi-criminals.

Mr. Bolan: No, but don't you feel that it's the act of criminality, as compared to a breach under a provincial statute which gets its power from the provincial Legislature which does not have the right to enact criminal law?

Mr. Kellock: All I can say is there are examples of cases in May which clearly under our jurisprudence would be viewed as matters which the provinces would be entitled to provide for, so they couldn't be criminal in the constitutional sense. Plus the fact that as soon as you talk about quasi-criminal it seems to me that totally obliterates the constitutional distinction that we live with and one has to find another test to distinguish civil proceedings from quasi-criminal proceedings.

Mr. Bolan: How about quasi-civil as compared to quasi-criminal?

Mr. Kellock: I am not sure that that throws any further light on it.

Mr. Bolan: No more than does quasi-criminal.

Mr. J. A. Taylor: Molestation must be confined to molestation in the civil sense of the word. If that is so, then any act connected with the service of a document with criminal connotations or quasi-criminal connotations would then not be within the ambit of molestation as it pertains to the concern of this committee. That's where it's difficult as to what quasi is, because if what's quasi-criminal is in fact or could be civil—and jurisdictionally it must be, otherwise the province wouldn't have the power to enact that legislation whether it pertained to the labour relations board or whether it pertained to a municipal zoning bylaw or a licensing bylaw passed by a municipality. If that is, in spirit and substance, of a civil nature, presumably it could come within the spirit of molestation under the Legislative Assembly Act. Therefore we might very well be dealing with the service of a notice of intention or leave to prosecute under the Labour Relations Act as the subject matter of a breach of privilege if we so found it to be.

Mr. Chairman: Except that that matter is not before this committee.

Mr. J. A. Taylor: What? The service of the—

Mr. Chairman: The deed to prosecute is before the Ontario Labour Relations Board and if I could just intervene in an attempt to clarify, neither counsel, nor our own, has brought in the interpretation of what this committee is about to include the matter that is before the labour relations board. In fact, Mr. Bullbrook made that distinction very neatly himself and indicated that he disagreed with the labour relations board's finding in that regard and that he was prepared to appeal that. But he did set that aside from this matter, so that matter of quasi-criminal does not appear in this instance of privilege before this committee.

Interjections.

Mr. Sterling: I don't think that's right.

Mr. Haggerty: No. Look at page 25, section 50; it is definitely pointed out there.

Mr. Kellock: I think what Mr. Bullbrook removed from debate—and I will deal with this on the next page—was a question as to whether or not what got Mr. Riddell into the difficulty was an extension of proceedings in Parliament, and that section 37 would have some application, either to the labour board proceedings or to—

Mr. Chairman: That's right.

Mr. Kellock: I think the service of the document is still before the committee and if the committee came to the conclusion that the service of a writ of summons was a breach of privilege, then the committee would have to grapple with whether or not the service and the notice of application for leave was quasi-criminal or not.

Mr. J. A. Taylor: And if it was quasi-criminal whether nevertheless it would be encompassed by the word "molestation" under section 38, so that that too could be a breach of parliamentary privilege. I think, Mr. Chairman, with respect, section 37 deals with utterances in the House, the Legislative Assembly itself or a committee, and the privilege that is extended there. Of course, the argument could be made that that might extend beyond the confines of the assembly. I think Mr. Bullbrook made reference to that, but we are not to pursue that. I think it is germane to pursue the question of whether the service of a writ of summons, or a notice of intention to bring an action, or a leave to prosecute is a breach of parliamentary privilege or could be interpreted as molestation.

Mr. Kellock: May I just say that "molestation" is a word that occurs in section 38 in connection with civil process. It doesn't stand alone, number one; but number two, if one has regard to what the rationale for the rule is it appears that it was considered inappropriate to have members of Parliament bothered by private litigants suing them for this and that and taking them away from their duties. But it was not considered appropriate that that privilege should prevent the enforcement of the laws by the state, and that if you look at it in that way then I think you would have to say that a prosecution for careless driving of an automobile would be something in which the state has a great interest and when the two concepts collide head on that the parliamentary privilege ought to give way in accordance with the quasi-criminal value.

Mr. J. A. Taylor: Then you are looking at the substance of it as opposed to the form, and you see, by looking at the substance, in minority government such as we have today it may occur to someone to sue Pat Lawlor or Donald MacDonald and enough of the opposition that the Conservatives might have a majority government around here, and we could keep them tied up in examinations for discovery and all kinds of things.

Mr. Chairman: If you could have done that, Jim, you would have done it a year ago.

Mr. J. A. Taylor: To me that would be an abuse of a member's parliamentary privilege.

Mr. MacDonald: Obstruction of the House.

Mr. J. A. Taylor: I don't know whether that would be obstructing or otherwise, but the fact remains that I see that as something that should not be tolerated, and the mechanics whereby that could be effected could and should be covered by the term molestation. What are the mechanics? It could be in the form of a notice, a subpoena, hearing for discovery and so on.

Mr. Haggerty: You could tie a member up.

Mr. J. A. Taylor: That's right, you could keep members out of the House and off guard, out of service for a long time.

Mr. Haggerty: Months and months.

Mr. J. A. Taylor: That is the type of abuse that I don't think should be tolerated and may have application in terms of interpretation of what molestation is. I certainly don't think that a member of this assembly should be privileged in any way in terms of having a greater right, or, as I indicated earlier at another meeting, become a super-citizen and have immunity in terms of criminal proceedings and even civil proceedings that any responsible citizen should be subjected to. There is an area here that if we're not careful we could use to frustrate the work of the assembly. I'm not commenting on the merits of this case. What I'm commenting on is my concern in pursuing the definition of molestation.

Mr. Kellock: I think, Mr. Chairman, that we are only here discussing whether the commencement of these proceedings per se and the resulting service of the documents constitute a molestation for a civil cause. We did not, at least as I understood it, get into whether either proceeding was well founded, frivolous or vexatious, or otherwise. This committee was not going to prejudge or make any judgement as to whether or not the words were defamatory or not defamatory or whether there was an unfair service or there wasn't.

If you're talking about proceedings that are clearly frivolous and vexatious, then certainly the argument can be made that there's no

difference between that and writing letters or harassing members in some other way quite apart from civil process. That could well be a molestation, but I don't think that question is before the committee.

Mr. Bolan: I disagree with you. We're trying to put a handle, aren't we, on molestation and what it means, and whether or not this particular action aganst this particular member, or these particular actions against this particular member, amounts to a molestation, amounts to a breach of his privilege?

Mr. Kellock: With respect, that's not what the order says. The order says that the service of documents is the factual matter that has been referred, and I understood the chairman to rule several times during the hearing of the evidence that the committee was not going to make a judgement as to whether the words spoken were defamatory or were not defamatory or were true or were not true.

Mr. J. A. Taylor: I think that's correct. I don't think we're here to judge the merits of an action which was instituted in the Supreme Court. What I'm saying is that there could be a number of suits or proceedings instituted which may or may not be frivolous or vexatious. They may be of substance. Even if they are of substance they could very seriously interfere with the legislative process. Assuming good faith in that regard, how would you fit in with the service of those documents the definition of molestation?

Mr. Chairman: That's the crux of one of the arguments in all of this, at any rate, as I would see it. I've evolved my own little definition of what constitutes molestation, and I think we all have. That will be, when we come to vote, a matter which I'd like to see discussed firmly. In my reading of the thing, I would tend to say that molestation has to be more than the service of a piece of paper, but rather has to be, on the other side of the coin, something which almost physically prevents a member from carrying out his duties. But I think that should be debated much further by the committee before we make that decision.

Mr. MacDonald: May I clear up a couple of points for my own satisfaction, if nobody else's? The judgement that was handed down by the labour relations board states flatly that prosecutions under the Labour Relations Act are quasi-criminal. I presume that must have been challenged in the courts or established in the courts as an accurate definition. Am I not correct?

Mr. Chairman: I don't believe so.

Mr. Kellock: I don't believe so. I can't imagine the context in which it would have been terribly relevant. There was one case where the discussion was whether or not there was an action or no action within the meaning of some rule, but I just don't know of any case where it would have been very important to decide that issue, other than here.

[3:30]

Mr. MacDonald: Okay, then let me carry it to the next step. If it is quasi-criminal and therefore falls into the criminal category, there is no privilege. If it is not quasi-criminal and therefore is civil, we are back to the issue that is really before us, and the statutes from 1770 on indicate that you can serve notice of an intended action.

Mr. Kellock: You can do more than that; you can commence the action.

Mr. MacDonald: I'm a little puzzled over what the whole argument is about.

Mr. Kellock: We didn't give it an exhaustive airing because of our conclusion, or my conclusion, that the mere commencement of the action in the high court was not a molestation within the meaning of the act. Therefore, it becomes interesting but somewhat academic as to whether or not the labour board proceedings are criminal or not criminal.

If I may just finish and then I'll be through —so to speak.

Mr. MacDonald: Sounds like something out of Alice in Wonderland.

Mr. Kellock: In any event, the distinction between quasi-criminal and criminal is made in two cases cited on page 49. We have reviewed somewhat this question and conclude that the labour board prosecution is probably quasi-criminal for the purposes with which we are concerned. In any event, because we have come down on the other side with respect to the civil action it becomes somewhat irrelevant. Then I simply conclude by dealing with the section 37 aspect which might have been raised but was expressly withdrawn from the committee's consideration by Mr. Bullbrook.

That does not mean that the committee isn't free to consider it and to determine whether or not something that is said in the House can, if repeated outdoors, carry with it the same privilege that attaches to it when it is said in the House. The record in this case doesn't really permit that argument to be made; and the Supreme Court of

Canada expressly ducked it in the Roman case. Our view is that the Supreme Court of Canada was right in ducking it and that the Court of Appeal in Roman really hadn't a great deal to say that was of any use on this point. And the federal statute is different, in any event.

In conclusion, I don't think the geographical location of the delivery or service results in a breach of privilege because of the problems with the order in council. I don't think the mere commencement of either proceeding represents a contempt of the House or a breach of Mr. Riddell's privilege, because the Legislative Assembly Act, as I read it, was intended to put in place in Ontario the freedom from arrest and molestation as known in England in 1876. That clearly did not include a pre-1770 privilege. I can't find anything that indicates that the Legislative Assembly intended to resurrect a privilege that had been dead for 100 years in 1876; in fact, the debate that took place at that time pointed in the opposite direction.

This assembly is the final arbiter of these questions and everything I have said in this memorandum can be found by this committee to be wrong. All I can say is I couldn't write sensible reasons for judgement at the moment, without having heard the discussion that is going to ensue, leading to any conclusion other than the one that is before you.

Mr. Chairman: Before we entertain questions which will go to the heart of the matter, could we entertain a bit of discussion about the form of the report itself? It is my view that the letter written to the committee forms the substance of whatever report we might make. We may or may not agree with that. It will be the subject of debate and a vote. But the form of the report would simply be the findings of the committee in a succinct manner as an introduction; the contents, basically, of this report before you would be included. We would also like to include in the report to the House copies of the cases that are quoted as we go through here.

So the report itself would take probably roughly three parts: the first would be a short finding of the committee, rather a summary; the second would be whatever we would like to do with this particular memo—in fact the memo itself would probably constitute the basic part of it. In addition, there would be written into the report an appendix which would include the cases that are quoted in here. Is that generally agreed upon?

Mr. J. A. Taylor: Basically, are you saying the summary of the facts, the committee's decision, and then reasons for the decision?

Mr. Chairman: Yes, right.

Mr. Kellock: Together with—at least it is customary in England and a case I see in Ottawa, to include the Hansard, the documents.

Mr. Chairman: Yes.

Mr. Kellock: And, if you keep formal proceedings, such as who attended on what date, and when the committee met.

Mr. Chairman: I am not sure that it is necessary to include the Hansards as they are already printed and it would be rather unnecessary, I think, to reprint those. But the others, I think, would constitute the form of it. Is it agreed that would be the form of whatever report is there, just to offer some guidance in drafting that?

Mr. Kellock: I'm sorry, I'm not clear—and perhaps it is too early—but is it the intention of the committee to produce a statement of the facts, a statement of the issues, the committee's views on those issues, and then treat the memorandum as an appendix?

Mr. Chairman: Yes, if it survives the committee.

Mr. J. A. Taylor: How do we report to the House?

Mr. Chairman: It is tabled with the clerk.

Mr. MacDonald: I am still not that clear, because as I understood the chairman, he said that the report to the committee would be a rather succinct, brief indication of what our conclusion was—there was privilege or there wasn't privilege—with minor elaboration. This document would be a backup to it. As I understood Jim, he was asking would our report to the House be a statement of the facts.

Mr. Chairman: That is included, in my view, in the—

Mr. J. A. Taylor: Presumably what we have before us as a basis for discussion by this committee to agree on the facts and then come to a decision, and give reasons for that decision.

Mr. Chairman: We had before us—you had a copy of this too, Jim, which is roughly what you said—a statement of the facts that were presented before the committee. Then we actually have the context of the counsel's opinion, and then an appendix which would include cases and whatnot.

Mr. MacDonald: The statement of the facts is just a repetition of what is in our

counsel's letter to us. Do you repeat that in it?

Mr. Chairman: In drafting the thing we would sort that out a bit, I think.

Mr. Kellock: So I didn't repeat the facts in the letter.

Mr. Chairman: No, they are not in this one.

Mr. Kellock: I repeated the statement of the issues, that is all.

Mr. J. A. Taylor: These are working papers, as I see them, for the committee, and the committee now will adopt whatever it wants from this material as its report.

Mr. Chairman: Yes. Do we have questions now?

Mr. Sterling: The relevant facts are that there was a statement made by a member of the Legislature and that a libel and slander suit ensued and a labour relations board action also ensued, and it has to be decided whether or not the service of those documents on his office here was in breach of his privilege.

I am most reluctant to go into great detail of all of that background in terms of the facts, because I don't know whether it is really relevant to the final decision of what we are getting at, and I think it only can harm both parties further. So I am very reluctant to even put much more than has already been submitted to us by our counsel at this time, save for perhaps a very brief paragraph on the facts that were before us. I certainly wouldn't want the facts as stated by either of the counsel to us dragged out in our report.

Mr. J. A. Taylor: That is what we are talking about.

Mr. Chairman: Yes.

Mr. J. A. Taylor: The facts are set out in the initial draft report, and presumably we would adopt those; unless someone has some argument with them.

Mr. Chairman: Yes, I would think so. Are there questions that the committee has for Mr. Kellock?

Mr. Sterling: There is only one other thing. Mr. Bolan told us at the outset of the meeting today that he was perhaps going to introduce another report. I guess we'll have to decide when we receive that report how it would tie in with this report as presented.

Mr. Chairman: It could tie in in several ways. Mr. Bolan might exercise an option to move that his report be adopted. The committee might say no, yes, parts of it—whatever. If that motion should carry, of course, that would form the substance of the report. It flies in the face of hiring counsel to draft a report, but I would see no grounds for ruling it out of order.

On the other hand, if he chose to introduce a motion and it didn't carry, there is a tradition in this House of adding an appendage to a committee report which is commonly called a minority report. That's done in a number of forms. I believe the most proper one is to simply record it as a dissenting opinion and not use the term "minority report."

Some members exercise their option, although it's questionable, of not signing the committee report. It's a practice that has been carried out here.

So there are various means at the committee's disposal to cope with that situation. There is some time for discussion and I would be pleased to entertain it. It might be premature to move motions at this stage.

Mr. Bolan: I would like to ask some questions.

Mr. Sterling: Mr. Chairman, are there going to be any motions today? Could we address that? I'm sorry, I have a plane leaving at 5 o'clock this afternoon and I would appreciate catching that plane.

Mr. Bolan: Mine is leaving at 6.

Mr. Chairman: I cannot preclude motions from members of the committee, but I think it was roughly agreed that we will not come to a final determination on this today.

Mr. MacDonald: We have been given notice of Mr. Bolan's alternative suggestions. It seems to me it would be rather absurd to start moving motions now without having access to what he is going to present, because then we'd have to review the whole process.

Mr. Bolan: Basically what I will be saying is that it is not quasi-criminal—that is, the application to prosecute is not quasi-criminal; and I will be giving reasons for that. The other point will hinge on the definition and interpretation of the word "molestation" as well as the history of the development of arrest, detention and why we included the word molestation in our act and why, as I understand it, it is not part of the—

Mr. MacDonald: Do you think you'd have the patience to do that?

Mr. Bolan: Oh, we do it thoroughly, Donald. I learned that from you.

Mr. Chairman: The only caution I would give to the committee is that I would ask you to remind yourselves from time to time that if we go past Thursday of this week, we will have great difficulties.

Mr. Bolan: We'll be finished.

I just have a few questions to ask counsel.

Mr. J. A. Taylor: Before you do that, could we at least agree on the facts? They are succinctly set out in this draft report.

Mr. Chairman: I think there is general agreement on those. I haven't heard any dissenting opinions on the facts as laid out in the initial draft report.

Mr. J. A. Taylor: We agree on the facts that we as a committee feel are relevant to our decisions.

Mr. Chairman: I believe that's so. There is no argument on those; I think we can take those as being agreed upon.

Mr. J. A. Taylor: That's progress. Your witness.

Mr. Chairman: We might also agree to attempt to adjourn by 5.

Mr. Bolan: I have to leave at 4:30.

Mr. Chairman: All right, 4:30.

Mr. Bolan: In section 38, you have the words "arrest, detention or molestation." Presumably you can have a molestation without having an arrest and/or a detention. Would you not agree?

Mr. Kellock: Yes.

Mr. Bolan: Have you been able to put a definition on molestation? How would you define a molestation?

[3:45]

Mr. Kellock: If you're asking me have I thought of any examples—

Mr. Bolan: Or definitions.

Mr. Kellock: —I have none except those that emerge from the examples given in May, the examples that have been discussed here, perhaps such as a totally frivolous proceeding —I have reserved judgement on that one—or a threatened attachment for failing to attend before a special examiner, or answer questions that are deemed to be relevant and put. The problem with the use of that language in the first place is that arrest as a form of execution of a civil judgement is something I am not very familiar with and which I don't think was in great vogue, even in 1876, in this province.

It seems to me that the use of the language is just an echo of the chapter headings in May.

Mr. Bolan: What about the definition of molestation in the Shorter Oxford English Dictionary? First of all, before getting into that, wouldn't you say that molestation in the context in which it would be used or defined in this section is a subjective test rather than an objective test? In other words, what may be molestation to Mr. Taylor, who is being sued as a negligent driver of a motor vehicle—

Mr. J. A. Taylor: I wish you would take another example.

Mr. Bolan: —may be different to Mr. Riddell being sued for libel and slander as a result of statements made.

Mr. Kellock: In your position I would hesitate to adopt a subjective test because that then becomes incapable of proof. You are then sort of in the position of the trial judge who is forever attempting to decide whether a flexion extension injury—that is, whiplash—really occurred or didn't. It's a very unenviable position for any body that has to make decisions to be in. I see no reason in this case to assume that the Legislature intended that if any member got up and said he felt molested, everybody would immediately buy that because it was a subjective test.

Mr. Bolan: Wouldn't the question of molestation depend on the type of action which was started against the individual and the context in which the alleged action arose?

Mr. Kellock: I think you've begged the question because you assume that the commencement of the action is a molestation or can be in law.

Mr. Bolan: The service of the documents in this case is surely the beginning of an action of any cause or matter of a civil nature.

Mr. Kellock: But it doesn't carry with it the physical taking hold of the body or any threat of that.

Mr. Bolan: You are interpreting molestation as meaning a physical taking or holding of the body.

An hon. member: Not always.

Mr. Bolan: I am asking Mr. Kellock, Mr. Chairman.

Mr. Kellock: I can only conclude from my research that that's what Sir Oliver Mowat thought he was doing.

Mr. Bolan: Have you got a definition anywhere of molestation which includes meaning an arrest or physical detention or a physical holding of the body?

Mr. Kellock: No, unless you adapt the principle of statutory construction, that is, that you look at all of the words used and conclude that all of the words have some common denominator and that they are not totally unrelated one to the other. If that is the case, then they are to be read and, consequently, "molestation" is stuck in there to

cover something that couldn't be defined exhaustively, but had the appearance of an arrest, which is a physical taking hold of, a deprivation of liberty.

Mr. Bolan: Harassment.

Mr. Kellock: Well, harassment—

Mr. Chairman: Pretty loose.

Mr. Kellock: —is pretty loose, certainly. Harassment is definitely involved in the use of the word molestation, but as used in section 38 it is hooked together with civil process.

Mr. Bolan: It isn't. It says "or." It does not say "arrest or detention or molestation." You hook "arrest" and "detention" together and then they are separated by the word "or" from molestation.

Mr. Kellock: You have to keep reading the sentence—"for any cause or matter." That means, to me, as a lawyer, a legal proceeding—

Mr. Bolan: That's right.

Mr. Kellock: —whether commenced by writ of summons, notice of motion, petition or any other way that one commences a proceeding. You first of all have to have a proceeding, and then you have to have an arrest, detention or molestation.

Mr. Bolan: Then you have to have what?

Mr. Kellock: Then you have to have an arrest, a detention, or a molestation. If the intention was to prevent the commencement of civil proceedings per se, the Legislature used very peculiar language to accomplish that purpose.

Mr. Bolan: How about this for a definition of molestation? "Molest: to cause trouble to; to vex, annoy, put to inconvenience." Again, isn't that where we have to look at the subjective aspect of it? The subjective aspect of it meaning this particular type of action against this particular individual. Do you agree?

Mr. Kellock: Yes, but I can't imagine any defendant in any civil suit not being molested in that sense. Anyone who was sued would feel harassed, inconvenienced, put out.

Mr. Bolan: Not necessarily. Not as it may affect his work in the Legislative Assembly or his work as a member. You have to bear in mind Riddell's evidence of how this affected him.

Mr. Kellock: I don't think anyone disputes that because it's in the statement of fact.

Mr. Bolan: This is what I mean; when you say you have to look at how, in his mind, this particular action affected his capacity as a member, isn't that where the breach of the privilege comes in?

Mr. Kellock: If you say the privilege exists, then certainly those facts would constitute a breach; but where we part company is, does the privilege exist or not?

Mr. Bolan: What you're saying is that the privilege only exists if there is some kind of holding of the body.

Mr. Kellock: To me that appears to be the case, based on the historical background and the views of the members of this House who took part in the debate when the bill was originally introduced.

Look at it this way: If the intention was to produce the result that you say ought to be the result of this inquiry, would the Legislature not have used quite different language? What was meant when the member rose and asked, "What is the meaning of the word 'molestation?' " It was pointed out that privileges that had existed in earlier times had been amended by statute to prevent abuse and that no one in 1876 would argue for an extended meaning of the word "molestation."

Mr. Bolan: You say that the word "molestation" as it exists in Canada today is similar to the word "molestation" as it exists in England?

Mr. Kellock: No, because there isn't any inherent privilege, as I see it, so consequently you are stuck with the language of the statute; and the job of this committee is to construe the language of one section of the statute, which deals only with a small portion of the much broader privilege in existence in England against arrest or molestation. As I say, molestation in England can mean hurling insults at the member on his way from lunch back to Westminster, but that is not what is embraced in section 38.

Mr. Bolan: But in England there is no molestation arising out of a civil action.

Mr. Kellock: Per se, that is right.

Mr. Bolan: Whereas here there can be, arising out of a civil action. You can have a molestation in Ontario arising out of a civil action.

Mr. Kellock: Well that's the very question they are putting to us to answer.

Mr. Bolan: Well it's in the section; that's specifically what the section says.

Mr. Kellock: If you are saying to me that there can be a molestation because an action is commenced, then I would say no; if you are saying that a civil cause may give rise to a molestation, I agree with you.

Mr. Bolan: All right. Let's look at the section again. "Except for a contravention of this act, a member of the assembly is not liable to arrest, detention or molestation." A member of the assembly is not liable to molestation. You see molestation, Mr. Kellock, is separated from the other two. I understand your argument on the ejusdem generis rule, I understand that; but I say that your word "molestation" is not linked with the other two. In fact it is separated and the word "molestation" is put in there as a basket to cover everything else which is not covered by arrest and detention.

Mr. Kellock: Are you suggesting, then, that to use proper English and in order to support my conclusion, the section ought to read: "is not liable to arrest, detention, molestation for any cause or other"?

Mr. Bolan: No, I am not saying that.

Mr. Kellock: Then I am not sure I understand the significance of the word "or." It simply precedes the last word in the group.

Mr. Bolan: So what you are saying then is that section 38 would not be applicable with respect to molestation alone arising out of any cause or matter of a civil nature, that there has to be an arrest and/or detention; that goes along with it.

Mr. Kellock: No, no. What I am saying is you can't read section 38 as if the other two words weren't in it. In other words, you can't read it as if it was restricted to molestation and then go to the dictionary to find out what molestation means.

Mr. J. A. Taylor: On that point of your earlier memo. "On December 22, 1875, the House engaged in clause by clause debate." The following appears with respect to clause 4, section 5; it's a very interesting last half of page 12 and at the top of page 13: "Mr. Fraser said the House was to constitute a court and in regard to matters under discussion, honourable members composing it were entitled to the same privileges as members of other courts. A judge could not be called upon to leave the bench and attend as a witness, and honourable members of that House should not be summoned away from their duties by any civil process. They were bound to attend to their legislative duties.

"A member: 'What about molestation?'

"Mr. Fraser thought that term might be too wide but no ridiculous interpretation will be given to it in the present day. His view was that it was intended to mean personal molestation, not molestation as to property." [4:00]

Mr. Chairman: I think the real problem is the one that Mike brings up. If you run to the dictionary to talk about molestation, I can't see it. In my own mind, when I thought about this, anyone who calls me with a contrary view to mine would be molesting me, and I am sure we all will have people who write us letters regularly or phone us regularly or stop at the office and offer a view that differs from the member's. If you accepted that dictionary meaning of molestation that's what they would be doing, they would be molesting the members.

Mr. MacDonald: Damned inconvenient.

Mr. J. A. Taylor: What troubled me in this comparison of a judge with a member of the Legislative Assembly is that it would seem that the act of serving a summons would take the judge in the one case and the member of the Legislature in the other away from his duties. The next question is the one of definition of molestation. Would that be considered molestation? I think, Mr. Kellock, you say no. The act of service of the legal document, whether it be a writ or a subpoena, would not in itself be molestation.

Mr. Kellock: What I think it means is that if there is some threat that the member will be taken by the heels if he doesn't go somewhere else and do something else, that involved the physical taking of the body which is embraced by arrest, by detention, by molestation, and consequently while the mere commencement of the civil action would appear not to be prohibited in England—expressly permitted; would appear to be expressly permitted in Ottawa—it might be that you couldn't be forced by subpoena to attend for examination for discovery during the sessions of the Legislature, during an important debate. That might well be a molestation.

Mr. J. A. Taylor: Well then my next question is, is that implicit, or could it not be implicit in the service of the document that the service may be nothing more than receiving a letter, as we do, hundreds maybe, every day—some of us do—but implicit in that legal document is a next step which is laid down in law which could be summoning you to do something, whether it is to appear before a tribunal or to subject you to some kind of examination?

Mr. Kellock: That might be. I didn't go that extra step because, with respect to the notice of intended action, nothing is required in terms of a physical appearance anywhere. The only reason for the notice is to give an opportunity to extend an apology, and one's personal presence in any particular place is not required for that. With respect to the application for leave to prosecute, one can

appear and respond to that application by a counsel, and there is not, for failure to go somewhere, any possible sanction or threat of sanction by the court which would involve incarceration or arrest or attachment. Let's use a word that isn't in the section.

Mr. Chairman: The irony is that many parliamentarians in the world wouldn't be having this kind of an academic argument about molestation because it would mean very close to the definition that Mr. Kellock has given to that word—that you might be arrested, you might be detained, but you might also be molested, making that distinction. It would have very much to do with the physical abuse of a member, and that is still, unfortunately, common practice in many countries of the world.

Mr. Haggerty: Yes, but would not the molestation, as it is now, be psychological impact on the person who is sitting there waiting? If he walked out on the street, he'd have somebody following him, ready to jump on him at any time with another writ or another summons. Psychologically, there is a confinement by physical force there.

Mr. Chairman: Except that I know of Parliaments in the Commonwealth where molestation of members would not be with a writ; it would be with a rifle. That's still the practice in many Commonwealth countries.

Mr. Bolan: Of course, we're a bit more civilized than that.

Mr. Chairman: I doubt it.

Mr. J. A. Taylor: Some men's minds are more easily imprisoned than others.

Mr. Kellock: The presumption here is that the Legislature in 1876 knew what it was doing. That may not be an irrebuttable presumption.

Mr. Chairman: I should point out that it wasn't outside of this decade in this country when that word "molestation" might have had considerably more relevance. When the Emergency Measures Act is passed, there are certain legal things that can happen to people; and, although the word seems a little confusing in this debate, there may arise, at some point in time in our own history, an occasion when you might be quite pleased that the word is there. You might not be arrested and you might not be detained but you might certainly be molested in the more traditional sense of the word.

We seem to have run out of questions.

Mr. Bolan: I just have one other question. This is with respect to your letter, Mr. Kellock. It's on page 17, again dealing with the question of molestation: "Cases did occur which were not covered by the words 'arrest' or 'detention' and as they should be covered in some way 'molestation' was added." It's a sort of a catch-all word to pick up anything else which might have to do with the civil action or with the civil cause, whatever it may be. That was said by the author of the bill.

Mr. Kellock: It depends on what cases he's talking about. It would appear to me that he is talking about cases which might not be covered by the words "arrest" or "detention."

If I were talking about legislating a prohibition against the commencement of all civil actions, I doubt very much that I would say there are cases that may not be covered by the arrest or detention.

Mr. Bolan: I agree with you. That was not the issue here. The issue was not to prevent the issuing of any action against anyone. Again—I go back to what I said earlier—this is why you have to take the subjective approach to it.

Mr. Kellock: So you don't contend that the mere issue of a writ is, in all cases, a molestation within the meaning of section 38?

Mr. Bolan: Absolutely. I'm not saying that. Or any proceeding of any type of civil nature; for example, a notice of an action, a notice of intent, or whatever the case may be. I'm not saying that any commencement of a civil proceeding or proceeding of a civil nature is per se a molestation. I'm not saying that.

Mr. Kellock: You're saying that there must be something else; and the something else, in your view, is the fact that a particular defendant, who happens also to be a member of the provincial House, feels in his own mind that his ability to carry out his duties is impaired?

Mr. Bolan: Precisely.

Mr. Kellock: I simply say that, as you describe it, that is a subjective test. I have never known a defendant who didn't feel upset to be sued even if it was frivolous. I would say that the added element, and we both agree that there should be another one, is something that involves the threat of the deprivation of liberty. That's the issue.

Mr. Bolan: That's the issue, precisely.

The committee adjourned at 4:10 p.m.

SPEAKERS IN THIS ISSUE

Bolan, M. (Nipissing L)
Breaugh, M.; Chairman (Oshawa NDP)
Haggerty, R. (Erie L)
MacDonald, D. C. (York South NDP)
Sterling, N. W. (Carleton-Grenville PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Assisting the Committee:
Kellock, B. H., Counsel for the Committee

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Procedural Affairs Committee

Proceedings against Member for Huron-Middlesex (Mr. Riddell)

Second Session, 31st Parliament

Thursday, June 29, 1978

Speaker: Honourable John E. Stokes

Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

THURSDAY, JUNE 29, 1978

The committee met at 10:17 a.m.

PROCEEDINGS AGAINST MEMBER FOR HURON-MIDDLESEX (MR. RIDDELL)

Mr. Chairman: The chair sees a quorum; so I will call the meeting to order.

This morning the counsel has a letter that he has received from Mr. Bullbrook which we should table with the committee.

Mr. Kellock: Mr. Chairman, I received a letter from Mr. Bullbrook, dated June 21, which I regard as supplementary to the submissions he made in person before the committee. I took the liberty of sending a copy to Mr. MacLean, from whom I have had no response. I would have filed it last day but I forgot to bring it with me.

I think it would be sufficient if it is simply tabled so that its contents are disclosed. If you like, I'll read it.

Mr. Chairman: Okay.

Mr. Kellock: It is addressed to me and says: "During the course of your questioning of me during my final comments to the select committee, you made some comments that I wish to further comment upon.

"You correctly stated that molestation is still a ground for the claiming of privilege in the United Kingdom. If one equates molestation solely with the commencement of civil proceedings, this leads both you and me to a difficulty in the argument submitted by Mr. Riddell.

"However, I would ask you to consider again the wording of Mr. Riddell's brief on page 13: 'The origin and scope of parliamentary privilege developed was that molestation included the commencement of civil proceedings during a session.' It is not submitted by Mr. Riddell that the only type of molestation to which a member may be subjected would be civil proceedings. The argument is that the generic word 'molestation,' prior to 1770, specifically included civil proceedings, and such form of molestation was removed in the United Kingdom as a privilege claim in 1770. Other forms of molestation continue to be available to such a claim in the United Kingdom.

"Essentially I am saying, Mr. Kellock, that civil proceedings were one molestation but that they were not the sole form of molestation. Yours truly."

Mr. Chairman: The committee members had a presentation from the counsel of a draft of the report and an opinion. It was considered on the last day that there was no argument concerning the facts as presented in the first report submitted by the counsel; and so they will stand. What is still open to debate in the committee, of course, is the matter of the opinion that was rendered by the counsel. Mr. Bolan has provided the committee with copies of his opinion on the matter. What is the committee's pleasure this morning?

Mr. Bolan: If I may, Mr. Chairman, I would like to go over certain parts of this brief which I have prepared, at the end of which I will be asking that the committee adopt this as the form of a report to be presented to the Legislature.

Mr. Chairman: That poses a small and delicate problem in that it certainly would be unusual to have a member of the committee write a draft report, particularly one which is contrary to the staff's draft report, and then put a motion.

I think what would be reasonable would be to give Mr. Bolan the opportunity to go through his report in some detail, entertain some discussion, and then entertain motions.

Mr. Bolan: Fine.

Mr. Chairman: And if I read your brief correctly, I don't think there is anyone who would really dispute very much what you have until you get to page three, where you begin your opinion. Would you like to pick it up there?

Mr. Bolan: I was just going to say that pages one and two more or less set out some of the facts which I think are generally agreed upon. I am not going to read all of this; however, I have marked off some parts which I would like to read and which I feel would be for the benefit of all members of the committee.

At the bottom of page three, the last paragraph: "It is manifest that these events occurred "—incidentally, Mr. Chairman, first of all, I would like to apologize to the chair-

man and to the committee for not getting this sooner. I finished it at 9:30 this morning when the whole matter was finally put together. There are some grammatical errors and I apologize to the committee for that.

"It is manifest that these events occurred during the current session of the Legislature. It is equally manifest that they did not make the member for Huron-Middlesex liable to arrest or detention. The task of the committee has therefore been to determine if they constitute a 'molestation for any cause or matter whatever of a civil nature' within the meaning of section 38 of the Legislative Assembly Act, and to advise the Legislature thereon.

"This issue in turn requires an opinion on two components: whether the events described are encompassed by the phrase 'any cause or matter whatever of a civil nature' and if so, whether they constitute a 'molestation.'"

Then, on page four, the second last paragraph: "Mr. MacLean also submitted argument in respect of the application to the Labour Relations Board for consent to prosecute Mr. Riddell. His essential argument in that regard was that such an application is not a civil proceeding but rather one which is 'quasi-criminal' in nature and therefore beyond the scope of section 38. In support of this view, Mr. MacLean filed as an exhibit the decision of the Labour Relations Board of May 2, 1978, wherein the board relied in large measure on the 'quasi-criminal' argument in finding that Mr. Riddell was not immune to its jurisdiction by virtue of section 38 of the Legislative Assembly Act.

"This argument is such a disconcerting one that the committee is compelled to rebuff it at some length. It appears from the board's decision of May 2, 1978, that this is not the first time it has 'characterized' consent to prosecute proceedings as 'quasi-criminal' in nature; indeed, it appears the board has come to regard such proceedings as analogous to a 'preliminary hearing in the criminal courts.'

"At another point in its decision of May 2, the board indicates clearly that it believes the Legislature provided for the enforcement of the Labour Relations Act 'by means of criminal prosecution.'" This is specifically referred to in the report. "Even if this line of thinking were not relevant to the committee's terms of reference, this committee would be remiss if it allowed it to pass without comment.

"Under section 91(27) of the British North America Act, the criminal law, including the procedure in criminal matters, is exclusively the authority of the Parliament of Canada. Under section 95(15) of the same act, the imposition of punishment by fine, penalty or imprisonment for enforcing the Labour Relations Act or any other validly enacted law of the province is exclusively the authority of the Legislature of Ontario. The Labour Relations Board is an emanation of the Legislature to which the Legislature has delegated certain powers. However convenient it may be for the board, or anyone else, to regard its procedures, or any part of them, as 'quasi-criminal,' let it be said that such is constitutional heresy which this Legislature never intended and cannot condone.

"The heresy is particularly invidious when support is found for it in Sir Erskine May's Parliamentary Practice. Thus both the board in its decision of May 2, and Mr. MacLean in his submission to the committee, cited May at page 103, 19th edition, to the effect that not only has parliamentary privilege never extended to criminal proceedings, there has developed 'a tendency to confine it more narrowly to cases of a civil character and to exclude not only every kind of criminal case, but also cases which, while not strictly criminal, partake more of a criminal than of a civil character.' This may be true and relevant to Britain, which is a unitary state; it is misleading and irrelevant to Canada, where the criminal law and procedure are federal and the civil law and procedure are provincial."

I then would like to go to page six, the last paragraph: "The term 'molestation' is obviously a quaint one of considerable antiquity. There is no precedent in the journals of the Ontario Legislature which can serve as an authoritative guide on how it should be construed. Precedents cited in May's Parliamentary Practice or drawn from the Canadian Parliament are of limited relevance since, as will be shown below, parliamentary privilege in Ontario proceeds from a constitutional base which is significantly different from that at Westminster or Ottawa. The committee has therefore approached the meaning of 'molestation' by considering the following aspects: the constitutional history, the intent of the Legislature when the term was enacted, the usual rules for interpreting statutes, and some common-sense criteria as to what it should mean today."

The next part, page seven, deals with the BNA Act. Pages eight, nine and the top of page 10 deal with the debate which took place in the House of the Legislative Assembly in Ontario in 1886 when section 38, as it then was, was created.

On page 10, the first complete paragraph:

"One conclusion therefore appears inescapable from this brief history, namely, that whatever privileges were asserted by the Legislature of Ontario in 1876, when 39 Victoria, chapter 9, received royal assent, they were not the privileges enjoyed by the House of Commons at Ottawa or for that matter, since Ottawa and Westminster were tacitly equal in this regard by virtue of section 18 of the BNA Act, in the United Kingdom. The Legislature had sought privileges identical to those enjoyed by the Canadian and British Parliaments and had been rebuffed; it thereupon created its own, which creation was undoubtedly within its constitutional power and remains so today." I just want to depart and say that this is the state of the Legislative Assembly Act today. It has never been challenged by the courts. It has been in existence for close to 100 years. One can only assume that through the passage of time it has been found to be intra vires the province.

"This distinction is particularly pertinent to a proper view of section 38. When the section was originally enacted in 1876, the statutory law in Britain was significantly different: the Parliamentary Privileges Act of 1770 provided that members of the British House of Commons could not be 'arrested or imprisoned' as a result of civil actions against them. It is a reasonable inference from what appears above that the Ontario Legislature in 1876 was aware of that fact, and it must be presumed that the Legislature was also aware that it was departing from the British model when it provided its members with freedom from 'arrest, detention or molestation' arising from civil actions against them while the Legislature was in session and for 20 days before and after such session.

"This is not to say that freedom from molestation is not a parliamentary privilege in Britain today"—I think it clearly is—"but only that it does not encompass molestation arising from civil actions against members" —and that appears to be what it is in the United Kingdom. "Conversely, it would appear there is in Ontario no general parliamentary privilege against molestation as there is in Britain, unless it be argued (which the committee does not) that the term is encompassed by the words 'assault, insult or libel' and 'obstructing, threatening or attempting to force or intimidate' as contained in section 45(1) and 45(1)(2), respectively, of the act.

[10:30]

"In short, the term 'molestation' has a parliamentary context in Ontario which is different from that in Britain (or, for that matter, in the Parliament of Canada) and it is pointless, if not misleading, to search in other jurisdictions for guidelines on how to construe it.

"The committee is bound, however, to construe the use of molestation in section 38 according to the usual rules of interpreting statutes. According to Maxwell on the Interpretation of Statutes, the primary rule is literal construction; that is to say, what is the ordinary and natural meaning of the words used.

"The Shorter Oxford English Dictionary defines 'molestation' as: '1. The action of molesting or condition of being molested; annoyance, disturbance; vexation; 2. A trouble, annoyance, vexation; a cause of annoyance. Now rare.' The Concise Oxford Dictionary of Current English states that to molest means to 'meddle hostilely or injuriously with.'

"Webster's Third International Dictionary defines molestation as 'a cause or state of harassment.' The word, according to Webster, is now archaic.

"Many examples of the use of 'molestation' in a legal sense could be cited but no purpose would be served in repeating them here. In general, it may be said they denote wilful interference, intended annoyance and deliberate harassment.

"A second fundamental rule of interpreting statutes is that individual words must be read in the context of the clauses or sections in which they appear, and the sections must be read in the context of the entire statute.

"The Legislative Assembly Act contains, in addition to section 38, a number of privileges, immunities and powers which the Legislature, in its wisdom, has bestowed upon itself. Section 35 concerns the power of subpoena. Section 37 guarantees free speech for members in the Legislature or its committees. Section 39 exempts members, officers and employees of the assembly from jury duty while the assembly is in session, and for 20 days before and after. Section 45 establishes the assembly as a court of record for the purpose of investigating and punishing breaches of parliamentary privilege and so on.

"The common thrust of these provisions is obviously to secure the functioning and the integrity of the Legislature and its members against certain claims and duties which, however valid, would vitiate the parliamentary process if allowed. This has been

true of parliamentary democracy since the earliest times." And there is a quotation from White on The English Constitution.

"Applying this context and construction to section 38 of the Legislative Assembly Act, the committee has concluded, and so recommends to the Legislature, that with respect to 'molestation'"—and this to me is the crux of the whole matter—"the section means a member of the assembly is not liable to civil law actions during a session of the assembly, and for 20 days before and after, when such action has the natural and probable effect of harassing, preventing or seriously interfering with the member's discharge of his or her public responsibilities, and when the subject matter of such action relates to public issues or concerns within the jurisdictional competence of the Ontario Legislature.

"It should be pointed out that in interpreting section 38 in this way, the committee is not recommending that anyone lose any right in law now existing to take civil action against a member of the assembly, even in situations where the criteria underlined above are satisfied. The effect of its recommendation in that regard would be merely to continue what section 38 already requires, namely, a stay or postponement of the action while the assembly is in session, and for 20 days before and after.

"In saying this, however, the committee is conscious that a potential conflict exists between section 38 of the Legislative Assembly Act and various provincial statutes which contain limitation clauses. The Libel and Slander Act, for example, provides in section 6 that an action for a libel in a newspaper or broadcast must be commenced within three months after the libel has come to the knowledge of the person defamed.

"If the committee is correct in its view of section 38, situations could arise where citizens would lose their right to sue a member for libel because of a conflict between this three-month limitation and the interdicted period of section 38, namely, the life of the session plus 20 days before and after. At one time, when legislative sessions lasted only a few weeks this conflict was of little practical consequence. Today sessions last many months and the conflict requires remedial action by the Legislature.

"The committee therefore recommends that the Legislature request the law officers of the crown to examine the Limitations Act and other statutes containing time limitations on civil actions against persons with the view to recommending such legislative remedies as may be required to reconcile such limitations with section 38 of the Legislative Assembly Act. I think that speaks for itself. What we're saying is that we're not trying to deprive anybody from an action. However, the law officers should examine the existing Limitations Act to make sure that a citizen's rights are not taken away from him by this interpretation of section 38.

"The committee believes it would be helpful at this point to advise the Legislature on the procedure it envisages for invoking section 38, should the Legislature agree to the committee's interpretation of molestation as set out in this report. A member complaining of molestation would rise on a point of privilege in the usual way. In due course, Mr. Speaker would rule as to whether a prima facie case has been presented. If so, the assembly would by motion refer the matter to the standing committee on procedural affairs for investigating and report."

The reason I say this is to take away the frivolous approach which a member might take to the whole question of privilege. Suppose, for example, I am served with a parking ticket tomorrow and I stand up in the House and say to the Speaker, "Mr. Speaker, on a point of privilege: I rise to claim that my privileges have been breached by section 38." Before he rules on referring it to committee, the Speaker has to see whether or not I have made out a prima facie case that my privileges have been breached. That's the first clearing house. That's the first step which must be met. The Speaker, being an individual responsible to the House and to society, would act as the initial clearing house to get rid of anything which may be frivolous.

"The committee would call evidence under oath to determine: 1. if the cause or matter complained of is of a civil nature; 2. if, being of a civil nature, it is related to and involved the member in a question of public policy and importance as opposed to personal and private matters; 3. if the natural and probable effect of the matter complained of would harass, prevent or seriously interfere with the discharge of the member's public responsibilities and functions both inside and outside the Legislature" during the time. You'll notice I say here "if the natural and probable effect of the matter complained of." I'm not talking about the purpose. In other words, I am not saying that in this particular case it was the purpose of the plaintiff to harass. I'm not saying that.

"The committee would be required to answer each of these points in the affirmative in order to find that the member's privi-

leges had been breached. It would report its findings and recommendations to the Legislature for concurrence. In the event that privileges were breached and the complained-of action not withdrawn voluntarily, the House would then be in a position to invoke section 45 of the Legislative Assembly Act for the purpose of effecting redress. Presumably the issuance of a writ of supersedeas staying the complained-of action until the interdicted period of section 30 had expired would achieve the desired result.

"The committee has applied these considerations to the reference from the Legislature of April 6 and finds as follows:

"1. That the service of documents on the member for Huron-Middlesex was a cause or matter of a civil nature;

"2. That the matter related to the member's involvement in a question of public importance, namely a strike at the Fleck Manufacturing plant at Huron Park, in the member's constituency;

"3. That the natural and probable effect of the matter was to harass, prevent and seriously interfere, and did in fact harass, prevent and seriously interfere with the member's discharge of his public responsibilities and functions while the Legislature was in session.

"The committee therefore finds that the member's privileges with respect to section 38 of the Legislative Assembly Act were breached.

"The committee is persuaded, however, that no further action by the Legislature would be appropriate at this time. As already noted in this report, the present reference appears to be the first occasion in which the term 'molestation' in section 38 has had to be examined. While asserting that its interpretation of the law is sound, the committee is bound to recognize it may also seem novel to others. These are circumstances which militate against a recommendation that the Legislature take punitive action.

"Those responsible for the actions complained of by the member for Huron-Middlesex testified before the committee that they intended no breach of his privilege and insisted they took action against him 'strictly as a private citizen.' On this last point, the committee declares its scepticism and, for the reasons given in this report, rejects the argument. As to intention, however, the committee believes there is a reasonable doubt and therefore makes no recommendation that the breach of privilege should be punished.

"Having said that, the committee notes that a writ of summons claiming damages for libel and slander has been issued but not yet served on the member for Huron-Middlesex. Should service occur during the period interdicted by section 38, the committee recommends the Legislature refer the matter to this committee for further consideration.

"The committee also recommends that Mr. Speaker request the Minister of Labour (B. Stephenson) to transmit a copy of this report to the Ontario Labour Relations Board for its information."

That, briefly, is my submission. It is subject, of course, to what course of action we follow now.

Mr. Chairman: I think what would be reasonable now is to entertain some discussion, which may involve questions back and forth.

Mrs. Scrivener: First of all, it's obvious that Mr. Bolan has put a great deal of work into this submission. I think he is to be commended for his great contribution to this committee.

Inasmuch as it is a very meaty submission and one which we received just before coming into this committee and are only now going through, would you indulge us by providing a five-minute recess so that we could study it a little further?

Mr. Chairman: Is that agreeable?

Mr. Haggerty: Five minutes would be fine.

The committee recessed for five minutes. [10:45]

On resumption:

Mr. Chairman: I will call the committee to order again.

There is the matter of how you would like to proceed. I might suggest that we entertain some general discussion. In order to focus the discussion there are some issues that were set out in the draft report for the committee and I don't believe there would be any argument that they are the crucial issues before the committee. We might focus our discussion on those before entertaining motions.

Mr. J. A. Taylor: Mr. Chairman, may I indicate what I would like to do? We have been provided with a letter from our solicitors dated June 27 and it was my understanding that that would form the basis of discussion for this committee so we could come to some conclusion. What I would like to do at the appropriate time, if I may, is to comment on that letter, which is some 25 or 26 pages in length, but only in regard to certain parts of that letter.

Mr. Chairman: I think now would be the time to do that, if you would like to proceed on it.

Mr. J. A. Taylor: If we have the letter in front of us I could for the sake of simplicity start with the first page, even though it may interfere with the flow or the logic, rather than just shuffle back and forth.

On page one I think an important distinction is pointed out; that is whether the subject matter of these proceedings was in fact a contempt of the assembly, or whether it was a breach of a member's privilege, or presumably both. As we go on I think the conclusion is that it was not a contempt of the assembly. I would like to just carry on from here, bearing in mind that there is a distinction.

The other matter that is brought to our attention on page two is whether the sequence of events was in fact a breach of section 38.

If we turn to page three under paragraph six it is pointed out that the Senate and House of Commons Act, 1970, confers upon the members of the Senate and House of Commons the privileges enjoyed by the members of "the Commons House of Parliament of the United Kingdom . . ." On page four, in paragraph nine, it states: "The only inherent powers concerning privilege possessed by provincial legislative assemblies are those required to prevent 'an immediate obstruction to the due course of' their proceedings and considered essential to the exercise of their functions as legislative bodies."

I would pass over the next number of pages until we come to page nine and, in paragraph 17, the references to the decision of Fielding versus Thomas of 1896, which is a case of the Privy Council. There it is stated that ". . . the British North America Act itself confers the power to pass acts for defining the powers and privileges of the provincial legislature. By s. 92 of that act the provincial legislatures may exclusively make laws in relation to matters coming within the classes of subjects enumerated . . ." It goes on to say, "It surely cannot be contended that the independence of the provincial legislature from outside interference, its protection, and the protection of its members from insult while in the discharge of their duties, are not matters which may be classed as part of the constitution of the province."

[11:00]

As I see that reference, what is really pointed out is that we have under the British North America Act, an act of the Parliament of the United Kingdom, an act of Westminster, that confers a constitution on the federal Parliament and also a constitution on the provinces. There are constitutional powers in that act of the British Parliament that are conferred on Ontario and, presumably, Ontario is supreme in terms of the matters within the ambit of those specific powers as set out in the British North America Act.

One of those powers deals with the whole area or sphere of property and civil rights. I would just ask the members to bear that in mind. It may very well be that that power is larger in some respects than certain overall powers that the federal government exercises under a general clause referred to as the "peace, order and good government" clause. I'm thinking now of the context of these proceedings which really deal with property and civil rights.

If you turn to page 11, paragraph 21, it states in part: "Prior to 1700, the UK Parliament had claimed by prescription, not statute, a privilege which prevented the institution of all civil actions against its members. In 1770, all claim to this privilege was surrendered. . . ." Then it goes on to say: " 'Any person or persons shall and may at any time commence and prosecute any action or suit in any court of record,' " I will leave out much of the rest and then continue with my quotation, "and 'and no such action, suit, or any other process or proceeding thereupon shall at any time be impeached, stayed, or delayed by or under colour or pretence of any privilege of Parliament.' "

The quotation from section 2 is in part: " 'Provided nevertheless . . . that nothing in this act shall extend to subject the person . . . to be arrested or imprisoned upon any such suit or proceedings.' " In other words, that act of 1770, in effect, took away much of the privileges exercised previously by members of Parliament and, in particular, permitted the prosecution and suing of a member of Parliament during the session or at any time, provided, of course, that it did not go so far as to include arrest or imprisonment.

On the same page, in paragraph 22, it states: "As noted by S. A. De Smith: 'The act of 1770 was the last of a series of four acts—the others were passed in 1700, 1703, and 1737—that were designed to abridge and finally to abolish the privilege against being impleaded that members of both Houses had claimed for themselves and their servants. This privilege . . . originally rested on the principle that persons attending Parliament should be free from molestation. . . ."

The privilege against being impleaded—and being impleaded, as I understand that term to mean, means being sued or prose-

cuted—was taken away in the United Kingdom in 1770. That privilege against being impleaded was based on freedom from molestation.

The Canadian Parliament adopted the same privileges as the UK Parliament for its members in 1970, in the latest statute that was referred to in this submission. I think it went on to say that it did so in so far as they were not in conflict with the Constitution, the British North America Act, or privileges under that act. That adoption of the same privileges as in the UK by the House of Commons in this country excluded freedom from molestation. So they consciously excluded that privilege in Ottawa.

Following again the letter, if you look at page 13, paragraph 23, reference is made to section 38 of the Legislative Assembly Act, and there is a quotation from that section, and I'll read that: "Except for a contravention of this act, a member of the assembly is not liable to arrest, detention or molestation for any cause or matter whatever of a civil nature during a session of the Legislature, or during the 20 days preceding or the 20 days following a session."

If you look at that, it appears to me that the Ontario Legislature consciously and deliberately included freedom from molestation in its act, and therefore included the privilege against being impleaded.

I would then direct your attention to page 16, and at the bottom of that page in paragraph 26 there is some reference to the debate towards the end of the year 1875, when the predecessor of our current statute was being discussed. A reference is made by Mr. Fraser, and I'll quote what it says here: "A judge could not be called upon to leave the bench and attend as a witness, and honourable members of that House should not be summoned away from their duties by any civil process. They were bound to attend to their legislative duties."

Would that summoning away again be an act that is intended to be covered by molestation? I would think that it probably would, because the next reference in that report, as set out at the top of page 17 of the solicitor's letter, is a quotation from a member.

"A Member: What about molestation?

"Mr. Fraser thought that term might be too wide . . ."

In other words, over 100 years ago there was the thought that the term "molestation" might be given too broad an interpretation.

If we follow down page 17, towards the bottom, Mr. Mowat said: "There was no danger of the word 'molestation' being improperly interpreted now. Cases did occur which were not covered by the words 'arrest' or 'detention,' and as they should be covered in some way, 'molestation' was added." In other words, "molestation" is not synonymous with or analogous to "detention" or 'arrest." I would think that "molestation" was intended to be something other than "arrest" and "detention."

Carrying on then through the letter of our solicitors, I will again read from page 19, paragraph 33: "The position in England and with respect to the federal Parliament would appear to be that the precincts of Parliament include all those areas occupied corporately by the members for the purposes of their parliamentary duties, including their offices, provided that those areas are within the control of Mr. Speaker."

I come back to my initial statement that we are dealing here with two things: a possible contempt of the Legislature as well as a breach of a member's privilege. I think that's what that distinguishes.

Going on with that thought, on page 20, paragraph 35 says: "By order in council made January 15, 1975, certain parts of the main legislative building, including the office of the member for Huron-Middlesex, were declared to be within the control of the Speaker." Then it goes on to say, "Historically, and in the absence of specific legislation, the Speaker of the Legislative Assembly exercised jurisdiction over the chamber itself and adjacent lobbies but not over members' offices."

I would like to comment on that. We use history in order to establish usage which manifests itself in practical terms through jurisdiction of the Speaker. I would point out that in terms of the assembly, I think probably that is inherent that there is that jurisdiction. Mention was made the other day of getting a member out of the House to serve a document; I think that would be not merely a breach of a member's privilege but would be contempt of the Legislature itself. The lobbies are an extension of the legislative chamber, and I think the offices become an extension of that legislative chamber as well. The intention here at Queen's Park was to clarify that through an order in council which has been pointed out by counsel to be defective.

Our counsel tells us that history doesn't help us; I would say that is because we don't have much history in terms of members' offices here. Probably 25 years ago, certainly not more, members used their desks

in the House as their offices. It wasn't a question of extending the House to separate offices; there then were common offices or common rooms that members used. As of late, in the last decade, there are separate offices for the members. The intention that members' offices be under the control of the Speaker in some respects is in my view an extension of the House.

[11:15]

What I raise is whether or not the lack of publication or laying of that order in council before the Legislative Assembly really destroys the jurisdiction of the Speaker in terms of his control over those offices and those offices as being an extension of the House. I put that to you because I am not convinced in my own mind that that defect in the processing of that order in council has the substantive effect of nullifying that order in council. I just put that to you to consider. The reason I do that, I may say, is that it might very well be that the service of documents in a member's office could be interpreted as contempt of the Legislature itself as opposed to a breach of a member's privilege, if it were found that those offices were an extension of the House, because surely we are all in agreement that you don't get members out of the House to serve documents nor do you enter the House in order to serve documents.

Paragraph 38, on page 21, states: "If one were to ignore the Parliamentary Privileges Act of 1770 and assume that members of the UK Parliament still enjoyed the privilege against being impleaded in 1876, it could be argued that the use of the phrase 'arrest, detention or molestation' in the 1876 act was meant to apply such a privilege in Ontario." The invitation to us there is "if one were to ignore the Parliamentary Privileges Act of 1770." I would think we must ignore the Parliamentary Privileges Act of 1770 when addressing the law of Ontario because in 1770 molestation was specifically excluded and the freedom from being impleaded was extinguished, but not so here.

If molestation means anything from a historical sense, it means the privilege against being impleaded because the reform presumably in the United Kingdom in 1770 was to extinguish that particular freedom from being impleaded which, in my submission, was molestation. We consciously included molestation in our privileges in Ontario, although not so in the House of Commons.

Paragraph 42, on page 22, points out: "It must be recognized that the Parliamentary Privileges Act of 1770 was passed to terminate abuses of privilege. If molestation is taken to prevent the commencement or prosecution of all civil actions against members of the Legislative Assembly during the sitting of the House and for 20 days prior to and 20 days after a session, then all types of civil action would be prohibited during this period of time." And it goes on to say what types of actions might be affected.

I think that's significant. I'll repeat that: "If molestation is taken to prevent the commencement or prosecution of all civil actions . . . " In other words, if molestation means the privilege against being impleaded, then this is what will flow from that.

I don't necessarily agree with the conclusion in that there could be a distinction between a writ being issued and a writ being served. Also, it really begs another question: if there flows from this privilege a denial of the due process of law or legal rights on the part of the citizens of this province then that invites an amendment to the legislation to cure that defect.

What troubles me is that we are not only in a position to say what the law should be, we're in a position to do something about that. I think we're in the position now to determine what the law is, even though we may dislike it or have a personal feeling that that law should not be relevant in the year 1978. That's another issue.

On page 23, paragraph 44, in reference to molestation there is the statement: " . . . leaving molestation as a catch-all word as implied by Sir Oliver Mowat. It might include a privilege against obeying a subpoena to serve as a witness." Again, that tells me that molestation is not tantamount to arrest or detention. Surely the issuance of a subpoena isn't arrest or detention. I think what's being established here is something more meaningful in terms of the interpretation of molestation.

The reason I again make reference to this is because of the argument advanced on the previous day that the important words were "arrest" and "detention" and that "molestation" only had meaning in terms of something analagous to arrest and detention. I frankly don't think that follows.

The conclusion drawn on the bottom of page 23, in paragraph number 47, is that section 38 does not create a privilege against the institution of any civil proceedings. I don't know that I could draw the same conclusion because I feel molestation has a fairly broad meaning and that meaning has been clarified by history. It doesn't necessarily prohibit legal proceedings. It may

merely postpone legal proceedings, for what that may be worth.

As I say, in the current situation that we're discussing I haven't pursued what may flow from the deliberations of this committee in terms of the action or intended action on the merits. I don't know what that might be; I haven't considered what that might be. What I'm saying is that given that molestation means freedom from being impleaded, then that doesn't necessarily mean being impleaded in perpetuity. It means that you couldn't be sued or prosecuted during the session or within 20 days of the session.

The question of the Ontario Labour Relations Board, the whole question of what's been referred to as "quasi-criminal", also troubles me. On the top of page 24, paragraph 48, it states: "If an application for leave to prosecute pursuant to the Labour Relations Act is to be regarded as quasi-criminal" then certain things flow. In looking at this whole area of what may be criminal or what may be quasi-criminal, it strikes me that much of what might be termed quasi-criminal could be just as aptly termed as quasi-civil. I made reference to dogs running at large, breaches of zoning bylaws; matters of really a civil nature which are prosecuted in a criminal sense but are clearly not in substance matters of criminal law.

For that reason, I would not dismiss the proceedings surrounding the service of intention to prosecute under the Labour Relations Act. In that I would refer you to page 25, paragraph 50, where it's stated: "Because of our conclusions above as to the interpretation of section 38 there is no need for the committee to make a finding on the issue at this time." Here we're dealing with quasi-criminal proceedings, and what I've said really is that I don't necessarily accept that; that may very well not be so.

In summary, if you look to the law prior to 1770 you'll see that molestation was in vogue, probably very much in vogue between 1700 and 1770. Molestation was really interpreted as freedom from being impleaded against, or being sued or prosecuted. The reforms in the Parliament at Westminster were such as to virtually eliminate that protection from suit or prosecution, except where what flowed from that was arrest or detention in matters other than criminal matters.

[11:30]

When the British North America Act was passed a constitution, both for the provinces and for the federal government, was set up in the British North America Act so that exclusive jurisdiction was given to the federal Parliament and to the provincial legislatures. The federal Parliament was confined by the British North America Act to ensure that its members of the House of Commons did not have privileges in excess of the privileges of the members of the British House of Commons. The Parliament of Canada in fact passed a statute that gave them similar privileges. In doing so, of course, the members of the Canadian House of Commons really have a flexible source of privilege in that presumably their privileges would shrink as the privileges of the members of the UK House of Commons shrank, because they are locked into whatever the privileges of the members of the British House of Commons happen to be.

Now you turn to what the privileges of the legislative assemblies may be. If we look at Ontario law and the development of that law with the statute in 1876 and the current statute, which is basically the same, we see that in the interim there was a decision, or possibly more decisions than one, by the highest appeal court we have—at that time being the Privy Council—which stated in no uncertain terms that the provinces have jurisdiction in a constitutional sense to provide for a member's privilege. It also went so far as to refer to a very broad band of powers that it does have under section 92 of the British North America Act and I would say in particular in those areas relating to property and civil rights.

So the government of this province, our assembly, has the right to provide for the privileges of the members of the assembly. In doing so, it consciously included not only freedom from arrest and detention but freedom from molestation. Historically molestation was interpreted as basically freedom from being impleaded against, which meant freedom from being sued or prosecuted. Reference wasn't made as to whether it was when the session was in place or whether it was 20 days before or 20 days after. These are later additions. It would appear to me then that this House consciously adopted privileges that exceeded the privileges of the members of the House of Commons in the United Kingdom and also members of the Parliament of Canada.

The question that troubles me is whether a legislative assembly has more power in this respect than the House of Commons, because our Parliament of Canada is confined to the powers or privileges of the members of Parliament of the United Kingdom. They cannot exceed the powers, the privileges of

the members of the House of Commons in the United Kingdom.

Mrs. Scrivener: But they did that verbally.

Mr. J. A. Taylor: It may be difficult to embrace that concept from a logical or a rational point of view, because here we have the United Kingdom passing a statute at Westminster, known as the British North America Act, that wittingly confined members' privileges in the Ottawa House of Commons to those of their own Commons and certainly were not in excess of those privileges, but unwittingly did not ensure that the legislative assemblies, which no doubt were looked upon as lesser chambers, could not pass laws affecting members' privileges that were in excess of their own and those of the House of Commons.

That is the point that truly troubles me. When you look at the powers that were given to the provinces, which were subsequently interpreted in the courts as being very broad indeed if you look at the whole spectrum of powers under property and civil rights, then it's not logically impossible to adopt the argument that we do have in Ontario and in the provinces powers that are broader than those in the United Kingdom or in the House of Commons.

That's something that we in this committee no doubt will have to wrestle with. In making the remarks that I do, I find it objectionable that in this province, we should perpetuate the possibility of action on the part of members that might be considered unconscionable, and were considered unconscionable in 1770 in the United Kingdom. If that's what we have done, either wittingly or not, then I think it's again incumbent upon this committee to recommend that we review members' privileges to ensure that it doesn't extinguish legitimate rights of action and that it doesn't make members immune from action which is unconscionable or doesn't provide an exceedingly privileged position for our members of the Legislature

To me, that is another issue. I make these remarks because I don't think we can summarily dismiss our statute with the deliberate inclusion and debate of the word "molestation" in that statute, the historical meaning of molestation, and say that that really is tantamount to imprisonment or at least arrest or detention, and say accordingly that there's been no breach of privilege.

I invite the committee to re-examine breach of privilege of a member and contempt of the Legislative Assembly in the service of documents in the confines, not of the legislative chamber itself but of the extension of that chamber in the form of the members' offices.

Mr. MacDonald: I want to make a few comments on what Mr. Taylor has said, and then I presume that gets us back into the letter which our counsel has written to us and to the alternative draft report which Mr. Bolan has made.

Mr. Taylor concluded his argument by expressing his grave concern about a proposition that the Ontario Legislature should have greater powers for declaring the privileges of its members than the House of Commons in Ottawa or the British House of Commons. I agree with him that that's a matter of concern. In fact, I would say that it is almost ridiculous to suggest that this was the case; and if he has a problem, I suggest he has a problem because of his interpretation, which I think is a false interpretation, of the whole history of this.

His argument, for example, was that the inclusion of the word "molestation," along with the proscription against arrest and detention, in the 1876 act in the province of Ontario, was, in effect, restoring in the province of Ontario the abuses which had existed prior to 1770 in Britain, and which in Britain they had eliminated clearly, and which, presumably, in Ottawa they have eliminated clearly because they cannot have greater powers than the British House of Commons. As recently as within the last couple of months, we have had an interpretation by the Speaker in Ottawa, in the Huntington case, which states that a member is not immune to impleadings on a civil case, which was beyond the actual jurisdiction, operation or an extension of the House of Commons.

I repeat: I think the interpretation which has been placed by Mr. Taylor on the significance of the word "molestation" in section 38, or in the section that took place in 1876, is a false interpretation that defies the fact that the debates indicate that the people who were debating it—Oliver Mowat and others—recognized that they were living within the framework of what had been established in Britain, and what had been established in Ottawa; that they weren't seeking to give to the members in the province of Ontario greater powers than they had in Ottawa or that they had in Britain. In fact, if they were giving the province of Ontario greater powers than they had in Ottawa, I submit to you the federal government would have disallowed the legislation. Therefore, it seems to me that my interpretation of the intention and what they viewed as a reflection of that

intention in the statute that was passed in 1876 is the correct interpretation of it, and not the one that Mr. Taylor has given to you.

In fact, it is interesting to note in the debates that took place at that time, when the question was raised as to whether or not a broader interpretation wasn't possible, that it was dismissed by two members; one said the use of such an interpretation would be ridiculous and another said it would be absurd. I borrow the term "ridiculous" for the circumstances now. It is ironical that we had to go precisely 100 years before we got an interpretation which, in my view, is ridiculous, but which is essentially the interpretation that Mr. Taylor has put on it: the inclusion of the word "molestation" in the section of the Legislative Assembly Act.

The only other point I want to make at the moment is that I am intrigued by what appears to me to be the inconsistency in the argument of Mr. Taylor when he says we can't summarily dismiss the Ontario statute and his particular interpretation of the Ontario statute; that is the law. Yet in another context he asks us to summarily dismiss the law with regard to whether or not the offices are under the Speaker's control, because the law clearly indicates that the order in council is void until it has been tabled in the House and until it is registered under the Regulations Act.

[11:45]

Why can Mr. Taylor argue on one hand that we must live within the statute as he interprets it, and we can't summarily dismiss it, when in the course of his same analysis he summarily dismisses another law in the province of Ontario because it fits the conclusion that he wants to present to the committee? In short, I think the alternative interpretation which has been placed by Mr. Taylor—and the phrase I use, once again, is borrowed from the Hansards of 1876—is a "ridiculous" interpretation.

If this House is to argue now that the privileges of its members are in effect going to elevate them to super-citizens, who are going to be denied the immediate recourse to the law by any citizen who believes that his rights have been infringed upon — in short, that we are going to take an interpretation of the privileges of members back to the days of prior to 1770—I suggest that we would be making ourselves look ridiculous to the public. It is idle for Mr. Taylor to then argue that that worries him and that perhaps we should have the House re-examine the extent of our privileges and clarify them. The problem that he wants re-examined is a problem which he has created by his false interpretation of what has taken place.

Mrs. Scrivener: It seems to me that Mr. Taylor has given us a very clear and erudite comment. He has based his argument upon the various legal opinions which we have been receiving from very impressive sources. It seems to me that what is really before us, in spite of Mr. MacDonald's impassioned statement, is that we have to interpret the law as it was written and approved by our predecessors in 1876. If we don't care for that law, then I think we have to recommend that it be adjusted.

But we are asked by the Speaker to give an interpretation of section 38 of this act as it applies to Mr. Riddell's claim. If we have to do that, then I think it is very helpful that we do review what went on in 1876 and that debate. That's why I thought it was so impressive to have the Globe and Mail report of the day cited to us by Mr. Kellock, because it gave us a glimpse of the attitudes and views. These are found on pages 15, 16 and 17 in Mr. Kellock's letter. They give us a glimpse of the views of the day and their attitudes and approaches. They very knowingly and determinedly included "molestation," and discussed it not once but twice.

At the bottom of page 16: "Mr. Fraser said that the House was to constitute a court, and in regard to the matters under discussion, honourable members composing it were entitled to the same privileges as members of other courts." And so forth. The whole matter of "molestation" is on page 17: "What about molestation? Mr. Fraser thought that term might be too wide; but no ridiculous interpretation will be given to it in the present day." So at that time it was not considered to be an archaic form; they understood what it meant; they had a view of it.

In terms of Mr. Fraser's earlier comment about the House constituting a court, what he was saying, in effect, was that the Legislature had a style and approach and a regard of itself as being similar to that of a court. That then brings us to a point I made very early on when we had witnesses before us: when is a member a member and when is a member a private citizen? I suggest to you that if there is and has been a view of the Legislature as a form of court, then a member is a member at all times and very specifically for 20 days before and 20 days after a legislative session. It seems to me that all his deeds and actions and words are

tinted, are coloured by his membership in the Legislature.

So my points are that we must interpret the law as it was written. We cannot regard a member purely as a private citizen, especially when the Legislature is in session. I take issue with Mr. MacDonald's remarks about service of papers in members' offices and whether or not they are truly an extension of the Legislature. By intent, by legislation, by debate in the Legislature and by usage, members' offices fall within the jurisdiction of the Speaker, and I think it's purely an oversight that we have a legal flaw in that particular matter.

I therefore think that this committee should declare that yes, there has been a breach of privilege under section 38 as it affects Mr. Riddell. I think that, further, the committee should point out its view of quasi-criminal approaches to matters affecting the labour relations board, because really and truly I think I join Mr. Taylor in arguing with Mr. Kellock on this particular point. I think Mr. Bolan has made a very good point in his submission on that matter.

I think also that whereas we are dealing with the act as it was written and conceived and has been in effect for over 100 years, it may well be that we must now recommend to the Legislature that the act as it affects members' privilege be entirely reviewed in terms of the rights of a citizen in 1978. I would suggest that that be a very specific recommendation going forward to the Legislature from this committee.

Mr. Chairman: It's almost noon. I would think it would be appropriate that if we are to break for lunch that we would do so now and come back at 1 o'clock, at which time we would deal with the specifics of the matter. Is that acceptable to the committee?

Mr. J. A. Taylor: I was wondering if there are others who might wish to comment, as Mr. Bolan has, as I have, as Mr. MacDonald and Mrs. Scrivener have, before we do that.

Mr. Chairman: Yes, I was going to put that, just briefly.

Mr. J. A. Taylor: While it's all together.

Mr. Chairman: Four members of the committee have made rather substantive statements on it. I wonder, do other members of the committee wish to make that kind of a statement? Mr. Grande?

Mr. Grande: It's going to be very brief, and I certainly do not want to repeat what has been said, although I don't know to what extent repetition is going to follow. Actually, that's what we've been doing here for the past three to four weeks, just repeating.

As far as I'm concerned and as far as I've been able to read the letter brought forward by counsel, it appears to me that for every opinion included in that letter there is a basis; there is precedence for that kind of opinion. It goes back to the very early times in England.

In looking at whether the member's privilege has been breached here, as Mr. Taylor suggested earlier, I do not think we should not consider whatsoever the act of 1770, as if it did not take place. As the law of the province of Ontario, as the law of the federal government, derives specifically and directly from the fountainhead, England—supposedly the United Kingdom—any law passed in 1770 and later affects what is taking place or what will be the law in Canada.

In regard to the question of law and the meaning of the term "molestation" and whether that term was included in all kinds of bills and laws that were presented, I have no expertise whatsoever. Therefore, I guess I should leave it up to the lawyers to determine that. However, it seems to me, basically, it comes down to one particular issue and the issue is are members of the Parliament of Ontario or the House of Commons in Ottawa to be responsible? Because, if members act in a responsible way, no one would be coming before this committee saying there is a breach of a member's privilege.

In other words, if the member has spoken in the House and has spoken in committee regarding certain matters, and he goes outside of the Legislature and talks about those particular things that were discussed in the Legislature, it is clear that that member is protected and there is definitely a privilege for that member. However, if the member makes speaches or utters whatever substances or ideas that were not part of this Legislature outside of the Legislature, then in that particular case I would think that the member has to be responsible.

I reject totally that the member of Parliament is a super-citizen and is a member of Parliament and acts as a member of Parliament for 24 hours a day. If that is the case, and the argument Mr. Taylor puts forward is the case, it just means very definitely that the member of Parliament is above the law, above the civil law in the province of Ontario. I think that any act that was passed in this province, or anywhere else, would not for one moment think that that should be the situation.

As an individual member for this assembly, I reject that interpretation. While a member is in the House and speaks on the issues in the Legislature or in committees, there is protection for that member in order for that member to be able to fulfil his duties. When a member is outside of this Legislature, then a member should act in accordance with the law of the province of Ontario. I suppose that's where the difference is very clear. It's very clear, and I think that it's up to the individual members of the House to be responsible.

Mr. Sterling: Mr. Chairman, I had a great deal of difficulty, as everybody on the committee has had, with this question, because it deals with something which, if we find that there is a breach of privilege, is probably against the principles which I stand for in terms of believing, as Mr. Grande has stated, that we should be responsible for the actions that we do take outside the House.

Originally, when I looked at this particular section, and in terms of the evidence that I heard before this committee, I was convinced at that point in time that there probably was a breach of privilege on the bare meaning of the word "molestation" in terms of section 38. However, I have tried to keep my mind open and be fairly objective with regard to the situation, and I must say that in going through the historical data relating to this section, this act, and the historical situation relating to our federal Parliament, I would tend to view the Legislative Assembly in 1876 as not really addressing itself to the question of what molestation really means.

It seems to me that at that point in time they were attempting to define the privileges of the members of the Legislative Assembly. They had noted, or had obtained a copy of a Quebec act which had been passed at that point in time. It seems to me, from looking at the debate which was put forward in the document here, that when Mowat was asked about the word "molestation" he more or less put off that person and really didn't answer the direct question of whether or not the word "molestation" was too broad or was not broad enough. He sounded like a typical politican.

[12:00]

I also find it very hard to look at this section out of the historical content. Perhaps if I were sitting as a judge, I might have viewed it differently to what I do as a member of this particular committee. I think it's dangerous when you look at the intent of the Legislative Assembly in passing any act, because once you look into the intent it's very difficult to draw what the intent of one person in that assembly might have been as opposed to another or what one party might have meant or might have held as opposed to another.

It seems clear to me that the federal Parliament at that time was considered the senior legislative body. The attitude of the Legislative Assembly was exhibited in 1868 when it went to the federal Justice minister and asked if it could pass this act relating to the federal act on privileges. I would, therefore, have to conclude that in 1876 the members of the House at that point in time, time, from the historical context, did not believe they were making members of their Legislative Assembly immune from civil action.

Further, when Mr. Bolan suggests in his report that it would make good sense to amend this section in order to allow a member of the public to sue a member of the Legislature after the session had been completed—in other words just postpone the action—I don't think I can even accept that, because I don't believe that we as as members of the Legislature should have that privilege.

I need only draw attention to an issue which could happen if a spouse of a member of this Legislature who was not as happily married as myself brought action against a member of the Legislature and not only needed the right to bring the action but also needed the right for an immediate remedy. I cannot see how we could ever compromise our position in this Legislature to disallow that kind of an action, no matter how that action might be brought.

I would, therefore, have to go along with our counsel on this particular report at this time and hold that there was not a breach of privilege. I find that the arguments relating to quasi-criminal, quasi-civil, et cetera, in light of what I term or find relating to the word "molestation", are irrelevant to the final decision of whether or not there was a privilege involved in this particular case.

I also must say in closing that I find it particularly difficult in this case to come to the conclusions I have because of my great respect and admiration for Mr. Riddell in the short period of time I have been here. I find this way on the basis of an individual's rights in our province as against an individual member in our Legislature. I feel that in looking at section 38 we must strictly construe it as closely as possible in order to maintain the rights of the individual against the member.

Mr. Haggerty: There is no use in my rehashing what was said here in the last couple

of months. I feel there is a breach under section 38 of the act. I support my colleague in his brief this morning and other members. I don't want to get into the nuts and bolts of it, but in the past I have been familiar with unions and organizations, and I have worked around the unions. I know some of the difficulties that are there, even though you may have certain things that follow along the Labour Relations Act. But in a sense I think Mr. Riddell has acted in a responsible way. He may have used a certain word that's not suitable for certain groups or certain associations of people, but I feel that he has acted as a responsible member.

As I look at the word "molestation," it's in the act at present and it was put in there for a purpose; that is, to cover, in my interpretation, "any cause or matter whatever of a civil nature." It was put in there for a reason. You can talk about the historic facts as presented by our counsel and other witnesses here at the hearings. I think we have to look at the current intent of the legislation under section 38, and it definitely indicates that there is a breach of parliamentary procedure as it is now.

Based upon those comments, I would have to support the members who have suggested that there is a breach of section 38.

Mr. Chairman: Mr. Bolan, you did have your opportunity this morning. Would you like to reply briefly?

Mr. Bolan: Yes. First of all, there's not much by way of reply, other than to repeat what I said earlier.

I would like to move at this time that the committee adopt the report as presented by myself.

Mr. Chairman: I did indicate earlier that I would like to give the members the opportunity to speak to this and that perhaps it might be appropriate to deal with the four issues that were laid before the committee. That was agreed upon previously. Depending on how those votes go, of course, we will go to one report or to the other. Is that agreeable?

Mr. J. A. Taylor: Mr. Chairman, are you suggesting that the alternatives are one report or the other?

Mr. Chairman: I don't want to be simplistic about it, but I would like the members of the committee to entertain full debate on the matter. I would like them to decide roughly where they will go; that will flow into one report or the other. I wouldn't like to adopt either report whole hog, because you, for example, have taken exception to both copies of the report.

Mr. Bolan: For purposes of simplifying things, can we just take a straw vote at this time to see if there is a majority who hold the view that there has been a breach of the member's privilege and that everything else flows from there?

Mr. Chairman: Before we do that, there are a couple of things that should be done. One is that our counsel should be allowed the opportunity to respond. We did hire him as staff and he did prepare a report. Secondly, as chairman, I would like to take the opportunity, not to provide direction to the jury or anything, but simply try to focus the debate. It is my view that we could then come in this afternoon, have the straw vote —or the actual vote, if you like; there wouldn't be a straw vote—on the issues. Then we would move to the matter of which of the reports would be adopted and in what form.

Mrs. Scrivener: Mr. Chairman, it seems to me you are structuring this committee in a very rigid way.

Mr. Chairman: Yes, I am.

Mrs. Scrivener: I don't care one way or another about a straw vote; I don't think that means anything. I am surprised that, every person here having spoken, you then reject a motion.

Mr. Chairman: I'm sorry. I'm not rejecting the motion; I'm asking him to withhold it as we had agreed. You're quite right that I am structuring it rather firmly. We have been rather loose with the structure throughout the entire course of the hearings, but we are now at that point where the committee will make its decision. We will decide upon a final report. In my view, that demands a rather rigid structure.

Mr. J. A. Taylor: Mr. Chairman, may I just ask you a question to see if I understand just what you're saying? My interpretation is that we have all commented in connection with the submission made by Mr. Bolan and/or the submission made by our own legal counsel. Now we should have the opportunity to hear our legal counsel's comments in connection with positions or comments that we have made. I say that because you have asked our counsel to make some remarks, presumably to comment on interpretations or misinterpretations that some of us may have drawn, in an effort to crystalize the thinking of this committee, and then presumably the report that flows will not necessarily be the letter that we

have before us from counsel, nor the written submission from Mr. Bolan, but a new report from our committee.

Mr. Chairman: I would think so.

Mrs. Scrivener: Mr. Chairman, in response to our request last week, counsel has given us an elaborate report and statement as to his opinion. I don't know that he has anything more to add to it. We have discussed and received information about this matter exhaustively. I can't believe that there will be anything new that will be turned up. In addition, everybody here has spoken and has expressed an opinion which pretty well indicates what their position is.

I think we should just proceed to decide how this committee wants to react to the legislative request for an opinion, and get on to the next phase, which is debating the words with which we present our opinion to the Legislature.

Mr. Chairman: I guess I am of the school of thought that when I hire somebody at these rates to provide me with legal advice, when I get to that point that I write a report I don't shut him out, that is the time I want him.

Mrs. Scrivener: He is not shut out. We have the greatest respect for his opinion. I think at different times there will be occasions when we will require his opinion. But I am saying that to have a further elaboration of his paper is getting wearisome to us all.

Mr. Chairman: I am simply saying, for example, Mr. Bolan took considerable time and effort to put together his paper, as did counsel for both parties involved in the matter, and on each occasion we did have the counsel respond to that; and I would anticipate that he would be responding to Mr. Bolan's position paper that was presented this morning, and to some comments that are made by members of the committee in the course of the discussion. I, frankly, would think that would be necessary before we proceed with a vote.

Mr. Bolan: I just want the record to show that I have on the floor a motion which calls for the adoption of the report as presented by myself. If we want to discuss this after lunch, that is fine with me, but I want the record to show that I have such a motion. It is open to change, amendments, or whatever the case may be, but the basic thrust of it, of course, is that there is a breach of the member's privilege.

Mr. MacDonald: Mr. Chairman, if I interpret you, in effect you have made a ruling that we are to hear from our counsel. The import of Mrs. Scrivener's intervention is that we don't need to hear from him. She has great respect for his views but she doesn't want to hear from him any more. I do want to hear from him. If you have ruled that that is the case I'll leave that. I just wanted to raise another point of order.

Mr. Chairman: Let me try to clarify my version of what should happen and what we had agreed to previously. Mr. Bolan introduced his report this morning. At that time I specifically asked him not to make it in the form of a motion, although I had noticed that it is written in that manner; and also at that time I had presented to the committee a procedure which I thought was agreeable, which is simply to let each member of the committee respond in full or to make a statement on the specifics that you think you have heard through the course of this, and your version of the act, and all of the interpretations of the act.

It would now be my view that we should now hear from our counsel to provide a summation, and as chairman of the committee I would attempt to focus on a vote this afternoon, but the vote would occur on the issues that were placed before us in the draft report, which essentially speaks to what all lawyers in the matter have addressed themselves to, and those are the pertinent issues, rather than onto one report.

On the matter of whether Mr. Bolan's motion is in order, I would hesitate to make a ruling on that now; I'd like to think about that for a moment. My early musings on the matter would simply be that it would certainly be unusual to have a committee report formed on the basis of a motion of that type; particularly when the staff had already presented a report, and we resisted the notion of receiving motions on that at Tuesday's meeting. It struck me that that would be unfair as well, because some members of the committee were not here, so we would get a different vote Tuesday than we would on Thursday.

[12:15]

I resisted any inferences that we have motions on that report on Tuesday, and, although I reserve some judgement on this, I will probably reserve the same judgement on Mr. Bolan's motions this afternoon. I'd like the committee to deal with the issues first and then vote on a report which will be prepared, probably as a combination of all things that have been considered by the committee. I would note that our counsel did not present his report to the committee in the form of a motion to be adopted. And we resisted that

temptation on Tuesday. I think I might make the same kind of ruling today. I'm aware that Mr. Bolan has read into the record that he wants to show that he has a motion on the floor, and I'm saying that the chair is going to reserve a ruling on that until we meet again this afternoon.

Mr. MacDonald: On a point of order: Presumably the alternatives that the committee have, on a straight point of order, is that we continue now until we've concluded, or alternatively we knock off for an hour and come back. My inclination would be to continue. There are other things I had assumed, in view of earlier discussions, that this was going to be a rather cursory and short session —I suppose I should have known better— and that we could have other things later in the afternoon if it would be of some convenience. But I'm not pressing the matter. I'm just saying that if the committee by consensus is willing to go on now, that is what I would prefer. If the committee wants to come back at the one o'clock hour that you suggested, then that's the choice before us.

Mrs. Scrivener: Mr. Chairman, I'm more than a little concerned by your suggestion that you might rule in some way that would require the preparation of a new sort of composite report. This indicates to me that the committee would have to reconvene at some other time following the preparation of that report. I can foresee a great many problems in terms of pulling this committee back after this week. That's my first concern.

My second concern is that Mr. MacDonald had a rather hard comment to make about my approach to Mr. Kellock's statement. My view is that we have had a submission from our counsel which was elaborate and very well expressed. All members of the committee have spoken now to comment on the submission from Mr. Kellock; and to some degree —but only to a degree—on the submission from Mr. Bolan. What it comes down to is the view of the members of the committee as to whether or not there has been a breach of privilege.

The committee members have pretty well expressed themselves—those who are present today—as to their opinions and their positions. I think, to a degree, you embarrassed Mr. Kellock by asking him to comment on the views of members of the committee. I think this is not the position in which you should place your counsel. With all due respect, Mr. Chairman, I submit to you that at this point we ask Mr. Kellock for interpretation and for particular views as we require them, but I don't think you ask him to comment on our opinions.

Mr. Chairman: No, I didn't ask him to comment on our opinions.

Mrs. Scrivener: I understood that's what you are going to do after lunch.

Mr. Chairman: No.

Mr. J. A. Taylor: It may be, Mr. Chairman, we'll ask Mr. Kellock to comment. I have a couple of points that, as I pointed out, troubled me. I would appreciate his views.

Mr. Chairman: Precisely the kind of thing I think Mr. Kellock should be providing guidance to the committee on are—as an example, Mr. Taylor raised a number of matters of legal jurisdiction and the legal definition of the word "molestation." That has also been raised rather elaborately by Mr. Bolan and by counsel for both parties. The traditional role of the legislative counsel is to provide to the committee, first of all, the draft of the report; traditionally that has been done by the counsel, not by any individual member of a committee. Secondly, counsel traditionally provides legal advice. We are at some loggerheads here because there are members of the committee who are lawyers and we have had submissions from two other lawyers representing parties in the dispute.

We have at times had four different—at loggerheads—legal opinions expressed; but for the purposes of this committee our legal advice is provided by this gentleman sitting to my left, not by Mr. Taylor or Mr. Bolan or either of the other two counsel.

Mrs. Scrivener: With all respect, Mr. Chairman, that is my point. Mr. Kellock has given us his opinion about the constitutionality and other members of the committee have expressed other opinions. Obviously, they don't agree with him in some cases.

Mr. Bolan: We're not bound to accept legal advice which is given to us by counsel. I'm sure that Mr. Kellock understands that.

Mr. Haggerty: That's merely opinions.

Mr. Bolan: There's nothing to slight Mr. Kellock or anything like that. I would say that if Mr. Kellock has anything to add other than what he already has said with respect to the various definitions and with respect to what has been said over the past two days, fine, but if it's going to be repetitious of what he already has said in the report—well, we've heard it.

For example, in answer to Mr. Taylor's question about whether or not this Legislative Assembly has the jurisdiction to pass its

own rules for its own members, we understand Mr. Kellock's position on that; that's quite clear in his report. But if it's merely to be repetitious of what he already has said, then I certainly can't see the purpose of it.

If I may make a suggestion, I agree with Mr. MacDonald that possibly we should keep this going. I don't know how long Mr. Kellock would take to add new information. Presumably he would not be that long. We could then get right down into the question of whether there was a breach or not and give instructions to Mr. Kellock as to the type of report which we want prepared if there is a breach—if there is a breach what should happen, what should flow from that.

We don't have to sit down and write it longhand. Once he sees what we want he can come out and prepare this report and submit it to us for signing next week, or whatever the case may be, once we agree on the basic principles we're adopting.

Mr. Chairman: That's precisely the point. It certainly is common practice in this House that members of a committee will decide on a particular issue. The counsel will go away and draft the report which is in line with that issue and then we would sign it individually as members. It doesn't necessarily mean that we have to have another committee meeting. That is certainly no problem.

Let me put it to you as bluntly as I can. Is it the desire of the committee to have a response from your counsel?

Those in favour, please indicate.

Those opposed.

Mr. Kellock.

Mr. Kellock: Thank you, Mr. Chairman. I don't wish to comment on the views of any member of the committee or influence the vote in any way. I have some comments with respect to the legal points that arise as part and parcel of the debate this morning and I'm restricting myself totally to those.

It should be noted, immediately, that while Mr. Bolan's conclusion is the same as Mr. Taylor's conclusion, their reasons are not quite the same and the scope of the privilege as each of them views it is quite different. As I understand Mr. Taylor, his view is that the mere commencement of a civil cause constitutes a molestation within the meaning of section 38. Mr. Bolan, on the other hand, does not take that position, but has taken the position that a molestation requires, first of all, some proceeding in connection with a civil cause and, secondly, an element of harassment.

I can, therefore, agree with Mr. Bolan as I've already pointed out, that the mere commencement of the proceeding is not, per se, a breach of privilege.

The next question is the nature of the added element. In Mr. Bolan's version, the added element would require a specific inquiry by this committee, any time any proceeding was commenced, to ascertain whether or not that added subjective element existed. As I said the other day, I have difficulty with that as a practical application of the privilege simply because, to take the example Mr. Sterling put, I would think any commencement of an action arising out of a domestic dispute would have the effect upon the defendant that Mr. Bolan's report indicates to be the added element. I can't imagine any defendant in any proceeding who would not feel upset that he was sued. It goes without saying that all defendants have to take time from whatever else they might be doing to retain and instruct counsel.

Mr. Bolan: It has got to pass the Speaker. That's the difference.

Mr. Kellock: With respect, I wouldn't think that the Speaker is in a better position to ascertain what is in the mind of the person claiming privilege than this committee or a judge or any other person would be.

In any event, that is the added element that Mr. Bolan sees. I see difficulties with that in terms of its practicality. As I indicated, the added element that I believe is required is some threat of being physically dealt with, rather than simply having to defend oneself through obtaining counsel.

With respect to the proposition—I think advanced by Mr. Taylor—that the constitutional jurisdictional basis for the Legislative Assembly Act might be in part section 92(13) of the BNA Act, "property and civil rights within the province," I would suggest that that has problems. The Privy Council did not see fit to adopt that in its judgement that we have talked about. One must remember that there are federal civil actions as well as provincial civil actions. I am thinking of proceedings in the federal court, industrial property and that kind of thing which would clearly be caught under the definition of civil cause but would have nothing to do with property and civil rights within the province.

Mr. Taylor also said that freedom from molestation does not exist by virtue of the provisions of the legislation applicable to members in Ottawa. That statement was made a couple of times in his comments. In my respectful opinion, that is not correct. The freedom from molestation still exists,

both in England and in Ottawa. For example, in the 18th edition of May, chapter 7 talks about the privilege of freedom from arrest or molestation. In that context, molestation has nothing to do necessarily with the civil action; it can be molestation totally unconnected with any civil action.

Consequently, what I have said to the committee from the legal aspect is that the privilege against being impleaded started out as part and parcel of the larger privilege against arrest or molestation; it was carved out of that privilege by the 1770 statute. And so far as the United Kingdom and Ottawa are concerned, it still exists; and in my view it would still exist apart from civil proceedings in this jurisdiction if there were molestation that came within the inherent privileges of this House as described by the Privy Council.

With respect to the dictionary definition, if you like, of molestation, there are discussions of that word in the standard judicial dictionaries: Jowitt's Dictionary of English Law, Words and Phrases, by Burrows, and I believe Stroud's Judicial Dictionary. The common use of the word "molestation" is in a separation agreement between a husband and wife. It was a covenant always, each covenant not to molest the other. It is quite clear that the mere institution of civil proceedings does not constitute a molestation on that count. So that is an additional piece of information.

[12:30]

With respect to the wording of section 38 itself, as I understand it, the contention is that that section as it presently stands intends to prohibit on one view all civil proceedings, except at times outside of the time of privilege, 20 days before the session and 20 days after. That was the purpose of the 1700 statute in England. It takes a great many more words to accomplish that purpose than does section 38.

If you look at the 1700 statute and if you look at the 1770 statute, section 38 appears to have its origin not in the parts of the statute that prevented civil actions but in the parts of both those statutes that made it clear that the privilege from arrest was still to exist. For example the 1700 act is entitled An Act for preventing any Inconveniences that may Happen by Privilege of Parliament. "For the preventing of all delays, the King or his subjects may receive in any of his courts of law or equity and for their" —I'll skip a bit—". . . be it enacted by the King's most excellent majesty by and with the advice and consent of the lords spiritual and temporal and the Commons in this present Parliament assembled and by the authority of same that from and after June 24, 1701, any person and persons shall and may commence and prosecute any action or suit in any of His Majesty's courts—" and so forth, members of Parliament and so forth "at any time from and immediately after the dissolution or prorogation of any parliament until a new parliament shall meet . . ."

In other words, prior to 1700 the Commons had claimed the right of immunity at all times for all purposes. This statute was intended to cut down that and preserve the privilege only for the time when Parliament met. It goes on in a separate section to make it clear that the privilege from arrest still exists. I should point out that it also contains this provision: "And be it enacted by the authority aforesaid that where any plaintiff shall by reason or occasion of privilege of parliament be stayed or prevented from prosecuting any suit by him commenced, such plaintiff shall not be barred by any statute of limitation or nonsuited dismissed, or his suit discontinued for want of prosecution of the suit by him begun, but shall from time to time upon the rising of Parliament be at liberty to proceed to judgement and execution."

In other words, having provided for the result that some of the participants in the debate here today contend for, Parliament was very careful to put in that saving provision which is not contained anywhere in section 38 and which Mr. Bolan suggests ought now to be put in the statute.

The other point is that if it were intended by the use of the word "molestation" in section 38 to prevent civil actions, then I would think the question has to be answered why the language chosen is as it is, because an arrest or an intention in connection with the civil cause couldn't arise if the suit couldn't be brought in the first place. I think that is a point that perhaps has not been yet addressed by the debate here.

With respect to the portion of the debate that took place in 1876, which I have quoted in my letter, when it was suggested that members of Parliament are like judges and can't be called away, to me that implies being called away personally under compulsion. As I say, the only case in Ontario that has anything to do with this since Confederation that we have been able to find is a case called Backus and Robinson which was decided in 1922. It was a motion by Backus, the plaintiff, for an order postponing a trial which had been fixed for February 28—this

motion was heard on February 25, 1922—on the ground of the necessary absence of material witnesses.

Mr. Justice Masten "said that the action was for libel, and the defendants in their defence alleged that the statements of fact in the articles complained of were true, and that in so far as they were expressions of opinion, they were fair comments. The case was one of importance, in which nothing should stand in the way of an adequate trial." That was the first consideration.

"In a case of such importance, while it was unfortunate that a postponement should be required at so late a date, whereby great inconvenience and costs would be occasioned, and while it was possible that, in consequence of the postponement, there might hereafter be difficulty in securing all the evidence desired, yet, when counsel for the plaintiff stated in his affidavit that he believed that the plaintiff could not safely proceed to trial without the evidence of Mr. Drury, Prime Minister of Ontario, and Mr. Raney, Attorney General, and that it was impossible for the plaintiff's case to be properly presented without such evidence as could, in the affiant's belief, be given by these witnesses, that they were material and necessary, that they had been subpoenaed, and that the state of public business prevented them from attending the trial while the Legislature continued in session, and when the Legislative Assembly Act, RSO 1914, recognizes such a situation and excuses them from attendance at a trial during the session, the conclusion must be that it was necessary in the interest of justice, having regard to the first consideration mentioned above, that the trial should be postponed," and an order was made to that effect.

So neither Mr. Drury, the then Prime Minister, or Mr. Raney, the Attorney General, obviously took the position that they were totally immune from attending that trial, even during a session of the Legislature; and if I may just point out, the counsel involved in that case were Mr. Hellmuth and Mr. D. L. McCarthy, who would not be expected not to know the law. So that I simply point out that the interpretation that has been contended for here today appears to be without precedent.

One other matter I might draw to the committee's attention is a portion of the article by Professor De Smith in the Modern Law Review that was not directly quoted in my opinion. He is commenting on the method of withdrawing a suit from the court on the ground of privilege, and refers to the writ of supersedeas. "But although the courts could proceed no further when a supersedeas had been received, it was doubtful how far the privilege against being impleaded was well founded; and in Benyon versus Evelyn it was held, after a full review of the authorities, that 'to file an original against a member of Parliament is lawful, and not against the privilege of Parliament.'

"Nevertheless, each House continued to assert the privilege, and in the 18th century it was grossly abused by members in order to prevent their creditors from instituting or continuing actions for debt against them. This abuse was coupled with the still greater abuse of treating private civil wrongs committed by members of the public against members of either House and their servants as breaches of parliamentary privilege."

He then goes on to refer to the act of 1700 which I mentioned, which cut down the privilege so that one could be sued except while Parliament was sitting and he said that members of Parliament still abused that, and consequently in 1770 the conclusion was that it was time to eradicate that privilege totally.

I simply wind up by perhaps emphasizing what Mr. Sterling said; I don't know when the session of this House commenced, but it hasn't yet concluded, and if a spouse of one of the members in a separation situation was left without means, an application for interim maintenance could not be brought. In other words, that wife or husband would be left totally without any means or any way of getting it. That would be the necessary result of a finding that privilege exists in this case.

Mrs. Scrivener: What you are saying to us is the law is an ass, but we are still administering the law.

Mr. Kellock: Mrs. Scrivener, I have cited in the letter a proposition of statutory interpretation; and that is, where there are two possible interpretations open, one strives to pick the interpretation that doesn't lead to the conclusion that the law is an ass.

Mr. MacDonald: Not that the law is an ass, but some interpretation of the law may be an ass.

Mr. Kellock: Unless there are any other questions, I don't think I can be of any further assistance.

Mr. Chairman: Is it the committee's wish to continue with this matter? Is that agreed? Yes, you don't want an adjournment for lunch? Okay. We have a matter, then, that requires a ruling; and that is that Mr. Bolan has—

Mr. J. A. Taylor: Before that, I was just wondering if I could get the benefit of counsel's opinion. As I mentioned, there were several matters that troubled me, and matters that I raised. I was wondering if counsel could comment on what his view would be of the concept of the Legislative Assembly passing privilege legislation in excess of what was permitted by the House of Commons or the Canadian Parliament.

Do you think that is legally possible in the context of the current statutes, including the British North America Act? I pointed out that would trouble me. If we were to interpret section 38, particularly the word "molestation," to include pre-1770 thinking or law, then I would think we would have to assume that capability on the part of the province. First of all, would you agree with that, that we would have to assume that capability on the part of the province before the province could enact legislation in excess of the federal legislation?

Mr. Kellock: That raises a constitutional question and it raises the question of the interpretation of the British North America Act. The argument would have to be that for some purpose the Imperial Parliament had seen fit to limit the House of Commons and the Senate to certain maximum privileges, and for some reason the Imperial Parliament in 1867 intended not to so limit provincial legislatures. I cannot think of any reason that would support that proposition and, let us say, if that issue came to be argued, I would rather be on the side of John Sandfield Macdonald when he said—and the quotation is on page 9 of my letter: "It does not follow that the Legislature of Ontario has the power to exercise greater authority than the House of Commons of Canada can exercise. The limitation placed by the Union Act upon the greater body must, no doubt, be held by just construction of the statute to operate by limitation upon the subordinate legislatures as well."

So my opinion would be that he is right, and that if the court came to construe section 92 of the British North America Act, the likely result is that while that certainly gives the power to this House to define its privileges, it does not give this House power to create for itself privileges that the House of Commons is unable to create for itself.

[12:45]

Mr. J. A. Taylor: The reason I don't feel it's so crystal clear is that if you look at the interpretation of the British North America Act by the House of Lords, we have periods where we have privy councillors who are very supportive of federal rights—in other words, supremacy of the federal position and bringing under that basket clause of peace, order and good government, all kinds of jurisdictions that were never contemplated by the authors of Confederation—and at other times we have members of that Privy Council being very strong and supportive of provincial rights under the property and civil rights clause.

Depending on in what period in history one happened to live would be the posture that one took. For example, I might very well assume that the Parliament of Canada was supreme in many respects because I was conditioned to that by the law that was coming down at that time. I might be more chipper, more aggressive, less submissive if I happened to live and interpret in the period when the Privy Council was coming down in favour of the provinces. That is why I feel we have to watch how the interpretation may be coloured by history. I put that proposition to you because I don't know that this has been decided by any court. Am I correct in that?

Mr. Kellock: It hasn't, no.

Mr. J. A. Taylor: It's within the realm of legal possibility that it could be interpreted that the provinces in fact had the power to legislate in excess of the federal power in regard to privilege. That's why I threw that out. I am still not satisfied as to how that might go. We may lay bets, and the odds may be in your favour; I don't know. But what I'm saying is that this still remains an issue.

The other question I would put to you which troubled me is that molestation surely included freedom from being impleaded against.

Mr. Kellock: Originally.

Mr. J. A. Taylor: Prior to 1770. Am I correct in that?

Mr. Kellock: That's right.

Mr. J. A. Taylor: So that if we have that word "molestation," then implicit in that word "molestation" is being free from being sued or prosecuted, certainly while the House is in session; let's confine it to that—not necessarily, but let's say that it includes that.

Molestation may go further than that. As I interpret what you have said, it is that we have extinguished the inclusion in the word "molestation" of freedom from being sued or prosecuted but there remains some auxiliary or ancillary protection which may be—and maybe I'm putting words in your mouth—the service of a subpoena, for example. I'm not convinced, and this is what troubles me,

that the legislators in this province in 1876 deliberately and consciously excluded the broader definition of that word "molestation" in enacting it.

I appreciate that imputed to the legislatures was the full and infinite wisdom of the past in terms of English history and historical law, but I'm just wondering whether it's proper to assume that this Legislature deliberately excluded the broader interpretation of molestation at the time of enactment. I think you have to assume that in your argument, in order to conclude that it is not contemplated in the present statute.

Mr. Kellock: May I just interject? No, I didn't say that. It would appear to me that under section 45, the original section 11, the Legislature in 1876 subsumed many of the aspects of "molestation at large" into section 45, because "molestation at large" involved "assaults, insults or libels upon a member during a session; obstructing, threatening or tending to force or intimidate a member," and so on and so forth. Those kinds of activities still are dealt with in England as part of the lex parliamenti of molestation.

Mr. J. A. Taylor: I appreciate that.

Mr. Kellock: For some reason, that part of the privilege against molestation that had to do with civil causes was dealt with separately in section 38. The rest of it seems to have been codified in some degree in section 45.

Mr. J. A. Taylor: But we preserve the word "molestation."

Mr. Kellock: That's right.

Mr. J. A. Taylor: In preserving that word "molestation," how do you conclude conclusively that implicit in that word isn't the broader interpretation of "molestation" prior to 1770?

Mr. Kellock: Simply because, as the debates in the House at that time show, it was said that the word was included because "arrest and detention" might not cover all cases. Unfortunately I cannot read those words to mean that the draftsmen of the bill, and the proponents of it at the time, thought they were dealing with matters and circumstances totally divorced, unconnected and unrelated to arrest and detention. It seems to me what was intended was to cover any other physical restraint or attachment.

Mr. J. A. Taylor: You're going back to the debates to interpret the meaning of "molestation" that might have been in the minds of the legislatures—

Mr. Kellock: At the time.

Mr. J. A. Taylor: —in 1876. Okay. I just wanted to clarify that.

The other issue you might clarify for me, or assist me with, is the apparent contradiction that Mr. MacDonald saw in a strict interpretation of the law in the one sense—that is, the letter of the law—and the apparent potential for flexibility exhibited in another aspect. That other aspect is those parts of the building that were under the control of the Speaker, in particular the extension of the assembly itself and the members' offices.

It is my understanding that implicit in our constitutional rights is the control of the Speaker in regard to the assembly itself. Am I correct in that?

Mr. Kellock: Yes, but—

Mr. J. A. Taylor: That seems to be what has come out of the readings I have done in the material sent to us.

Mr. Kellock: I think that discussion has gone by the board in the light of the fact that the Legislature has dealt with the problem expressly in section 93 of the act. Whatever might have been is interesting, but there is no problem with interpreting section 93; it's quite clear and unambiguous.

Mr. J. A. Taylor: Presumably you would include the assembly itself?

Mr. Kellock: It says "such parts of the legislative building as may be designated by the Lieutenant Governor in Council in addition to the legislative chamber shall be under the control of the Speaker." That says to me that whatever used to be the case, the Legislature saw fit to declare by statute that the chamber is under the Speaker's control, but he has no further control unless and until the cabinet has properly extended his jurisdiction by order in council.

Mr. J. A. Taylor: What you are saying—and I'm not quarrelling with your opinions, I haven't in the past; I'm just questioning them in clarifying my own thinking—what you are saying is that the ancient practice and usage and development of the law through that process is not relevant in Ontario because the Legislature has seen fit to legislate and to provide for those areas that would be under the Speaker's control and, therefore, an extension of the assembly itself. Is that correct?

Mr. Kellock: That is substantially correct.

Mr. J. A. Taylor: So that you see the lobbies and the members' offices, even though normally conceived as an extension of the House—they certainly are in Ottawa—as not so unless an order in council, properly published and laid before the assembly, is

enacted? You're shaking your head in agreement with that.

Mr. Kellock: Yes, I'm agreeing with you.

Mr. J. A. Taylor: Then what you're saying is that any service of any legal process, any documentation that might compel a member to take other actions that could be as disruptive, I suppose, as one could make it, would not be a contempt of the assembly—

Mr. Kellock: I agree.

Mr. J. A. Taylor: —unlike the House of Commons in Ottawa. Nor would it be a breach of a member's privilege. Is that correct?

Mr. Kellock: That's right. And even if the order in council in question had been properly filed, published and so forth, the question would then still arise as to whether or not the geographical location of the service—that is, assuming it was in an area within the Speaker's control—constituted a breach of privilege, when that subject has not been expressly dealt with by the Legislative Assembly Act and would therefore have to be found to be a contempt by virtue of the inherent privilege of Parliament. You would then have to go back and see whether that activity satisfied the test set out in Landers versus Woodworth as to whether there was a sort of immediate obstruction. It would seem to me, even if the order in council had been properly put in place, the result might not have changed at all, because the leaving of the document at the member's office was really not an immediate obstruction to what was going on in terms of enacting legislation. I don't think we have to get into that because of the threshold of the failure to properly deal with the order in council.

Mr. J. A. Taylor: Really, in that case we're talking about contempt of the Legislative Assembly and not a breach of a member's privilege.

Mrs. Scrivener: Mr. Chairman, may I ask for a point of clarification in this regard? Carrying it on a little further and relating it to a remark I made an hour or so ago, I would put it to you that if you went out prior to this discussion and asked any member of the Legislature whether or not members' office space was under the jurisdiction of the Speaker, he would respond "yes."

Mr. Chairman: Which office, may I ask?

Mrs. Scrivener: Members' offices.

Mr. Chairman: Here in Queen's Park? Or constituency offices?

Mrs. Scrivener: No, I refer specifically to office space here.

Mr. Kellock: That's the first question I asked, and I didn't get that positive response.

Mrs. Scrivener: Secondly, last year there was a very considerable argument about space for members of the various parties which went on over a period of time and which was entirely referred to the Speaker, mediated by him and resolved by him. His decision was accepted, I think in the belief that he was the authority. That is a fact.

[1:00]

Mr. Chairman: Might I ask you how you hold that opinion when we have just voted on a private member's bill that the entire House be under the control of the Speaker and that particular bill was defeated? That's surely an indication in a very formal way of the opinions of the members of the House.

Mrs. Scrivener: I am talking about the particular items we have had as usage; that is, the lobbies, the front steps, the staircase, the legislative chamber, the members' offices—

Mr. Chairman: But that's precisely the argument.

Mrs. Scrivener: —for the last two years the whole approach has been that these are under the Speaker's jurisdiction. Areas that were not under the Speaker's jurisdiction were also very clearly designated.

We, of course, had a committee of the Legislature discussing this whole matter of what the Speaker should have. There has been a long debate as to whether or not the Speaker should ultimately have the entire Legislature within his jurisdiction, and that is what you are referring to. But in terms of what is now and has been usage since 1975, I put it to you that the attitude has been that the Speaker has jurisdiction over offices in this building for members of the Legislature.

Because of that attitude and usage, last year the whole matter of space for the Liberal Party and the NDP was referred to the Speaker who dealt with it on a continuing basis. There were news reports to that effect as well. You may remember that.

Mr. Chairman: There is also a vote in the House to the contrary effect; the members of the House now sitting dealt with that.

Mrs. Scrivener: That's not what we are discussing at this point—

Mr. Chairman: As a matter of fact, you are.

Mrs. Scrivener: —I am talking about what is here. I'm not talking about a private member's bill. I am talking about what's in the Legislative Assembly Act.

Mr. Chairman: I beg to interject; the members' services committee is still arguing that matter with the Minister of Government Services (Mr. Henderson) and he holds a different opinion.

Mrs. Scrivener: As to whether it is to be extended, yes.

Mr. Chairman: No, no.

Mrs. Scrivener: Yes, yes.

Mr. Chairman: As to whether it exists.

Mrs. Scrivener: I listened to the debate. They are discussing the broadening of the Speaker's authority. Right now and in terms of usage members' offices have been regarded as being within the Speaker's jurisdiction, most definitely.

Mr. Chairman: The only reason I pursue it is that I did raise the point in the House, and the Speaker concurred, that those members' offices which had obviously been considered to be under his control are not. He has indicated to me that he has asked the government House Leader to gazette the matter.

Mr. J. A. Taylor: Well then, that's clear, Mr. Chairman.

The other area I wish to pursue is just what section 38 does mean. Is it clear that a member of the Legislative Assembly can be sued and served with legal processes; examined in civil suits, and so forth, during the session? What protection is there in regard to the situation I mentioned last day that could be accomplished; namely, that there could be a flood of lawsuits against any particular member or members of any particular party in order to monopolize their time elsewhere?

It's all very well to argue that that proceeding may or may not be vexatious or frivolous, but then that is what you have to establish. You are already involved in the legal process when you argue to strike out a writ of summons, for example, or argue there is no cause of action because it is frivolous and vexatious. That is time-consuming and distractive itself to be involved in that process.

I am not arguing that members should be immune from a lawsuit or from the due process of law. I think there is a valid argument that there could be some deferral of that process in order to enable the legislators of this province to accomplish their work. Otherwise you could have a chaotic situation depending on the type of strategy that someone of a devious mind might like to undertake. What I pose to you is what protection is there for a member of this assembly if we reduce section 38 to naught? In current days I don't think you would see arrest for debtors. It would be a very rare occurrence when detention and arrest would have any meaningful connotation. Therefore, the most important word in my estimation would even be "molestation" because of the breadth of that word. That breadth was a matter of some concern in 1876 to the members and I feel it still hasn't been adequately defined in current terms. While I don't think there should be any process that would guarantee members against litigation, nevertheless, I feel there is a real reason and meaning for that section.

Mr. MacDonald: Is it not still in section 45?

Mrs. Scrivener: It was used twice, indicating that they had an attitude towards that word.

Mr. MacDonald: My point is simply isn't the possible use of "molestation," that you are now raising as not being in section 38, in section 45?

Mr. J. A. Taylor: It may or may not be. If it is, then what does section 38 mean in practical terms today?

Mr. Kellock: Their responsibilities. If section 38 had its origins in a time when it was called mesne arrest and civil suits were involved, which meant that if you were sued you were required to post bail, like security for costs or something of that kind, then that would have had great significance. It also had great significance as part and parcel of the remedies a judgement creditor had in respect of the ability to effect the arrest of the debtor.

If those things are obliterated by statute, then the force of section 38 in all or in part is spent. To me that is no sound basis for saying we must breathe new life into molestation. The fact is that it is still possible for an attachment to occur in connection with a civil process, for failure to attend for examination for discovery, for example, and for failure to attend as a judgement debtor to be examined as to your assets and so forth. Attachment is not the same word as arrest or detention which are separately legally defined in the judicial dictionary. That is one physical restraint that would have been covered by the phrase "molestation" used in conjunction with arrest and detention. And presumably that still lives.

I am not suggesting that a totally frivolous proceeding or series of proceedings could not be regarded as a molestation. That case has yet to be decided and it is not the case before the committee at the moment. That

may well constitute a molestation. The problem with that is that it would be difficult to determine if the proceeding was frivolous and vexatious unless the court decided that in the first instance.

Mr. J. A. Taylor: That would entrap the members of this assembly in that they would have to participate in that legal process.

Mr. Kellock: That is right.

Mr. J. A. Taylor: So the strategy would accomplish the end, regardless of the merits.

Mr. Kellock: It appears not to have been a great problem in the past. It hasn't happened. If it were to happen in the future, then the House is free to pass whatever legislation it chooses to do. There is already a Vexatious Proceedings Act; there could be amendments to that statute.

Mr. MacDonald: Could I just go back to the original area of concern that Mr. Taylor raised—namely, the apparent anomaly of the Legislature having the constitutional right, in reference to privileges of its members, of passing a law which would exceed the privileges that they have in either Ottawa or Westminster? Am I not correct that they were given a constitutional right within the framework of the British North America Act but surely that right was not an unconditional right? The conditions placed on it wouldn't be to exceed what had been done in Westminster or in Ottawa.

Mr. Kellock: That is the limitation that John Sandfield Macdonald saw as flowing from a proper construction of the British North America Act.

Mr. MacDonald: Right, so I don't think it is valid to argue that you've got the constitutional right under section 92 for the province to, in effect, pass any law it wants to give members total immunity.

Mr. J. A. Taylor: It's valid to argue it. As to whether or not your argument is valid or not is something else. I know it's hard to put your arms around that kind of an argument, but it may very well be a legitimate argument and may be correct in law. I don't know, and that's what I asked the legal counsel. It has not been determined, so I would say there's a value in arguing it, even though you may not agree with the concept. I would point out there is no law on the point. There's an opinion and that opinion may be the favourite opinion.

Mr. Bolan: I just want to carry on with what Mr. Taylor says. There's nothing explicit which takes away from the province the right to define their own powers and privileges. This was reported in the case of Fielding and Thomas, the Privy Council decision, which seems to be authority for the proposition that provincial legislation defining the powers and privileges of the provincial legislature rests with the province.

Mr. MacDonald: How can you say that there's nothing implicit in it to restrict it? There are two things: first, the right for designating or defining the limits of privilege at the federal House are that they cannot exceed those at Westminister; and, second, a totally accepted concept that the provinces were subservient or glorified county councils that were of a much lower status than the federal House. So surely it may be that it hasn't gone to court and the court has decided, but surely in light of the whole historical context and the constitutional context, if the court were asked to decide it they would say the logical, sensible thing.

Mr. Bolan: I would answer that this way: that the province can only deal with things which are within its jurisdiction. This is a matter which was clearly granted to it under section 92, subsection 1, so it is within its jurisdiction.

Mr. MacDonald: Yes, but it's not an unlimited right to declare privileges that were greater than those in Ottawa or greater than those in Westminister.

Mr. Bolan: It's lived for 90 years and nobody's ever challenged it. That's good enough for me.

Mr. MacDonald: I don't want to argue it. I'd only say that it's lived for 90 years because everybody accepted the interpretation placed by the legislators of the day—namely, that you weren't going to interpret "molestation" in what they deemed to be a ridiculous fashion.

[1:15]

Mr. Bolan: It's the whole act that we have to look at as well. The Legislature of Quebec did the same thing. In fact, this act is modelled on the act of the province of Quebec, particularly the section dealing with molestation. They make reference to it.

Mr. MacDonald: If either the provincial legislatures or the federal House of Commons and the government of the day thought this was their intention—and it wasn't their intention because John Sandfield Macdonald and others clearly indicated it—they would have disallowed it.

Mr. Bolan: You can't say that.

Mr. Haggerty: It's in the statutes now. I can't see your arguments, Don.

Mrs. Scrivener: I think it's significant that our Legislative Assembly Act has been amended from time to time—and in quite recent times—

Mr. Haggerty: It's been in there since 1875.

Mrs. Scrivener: —and yet these particular clauses have not been touched. It may well be that there was no incident to provoke the thinking of the members to consider what amendments should be in order; nevertheless they have endured all this time.

And it is our law. That seems to me to be paramount. This is our law. It's an interesting exercise to consider all the historic background and authorities in other jurisdictions, but this is our jurisdiction and the law we have been using and invoking throughout these years. The Speaker with his rulings has also invoked this act from time to time in the Legislature. Suddenly to reject it and say it doesn't apply or that we aren't going to use it in this case I think is quite fallacious.

Mr. Sterling: Mr. Chairman, when we talked about what the understanding has been in this province, I have never heard it argued before that there was any immunity from civil action in this jurisdiction or in any other jurisdiction. Frankly, as I said before, in 1876 I don't think the legislators of the day really turned their minds to what they were passing when they used the term "molestation." The attitude of the day clearly signifies that they deemed themselves a subordinate legislature. They deemed their rights and their privileges subordinate to the federal legislature because they asked their permission if they could pass the act at that time. There is no doubt in my mind there was that attitude.

Another thing I noted was that in 1868 there were different sets of government than there were in 1876. In 1868 you had a Unionist government—the predecessors of the Conservative Party—and a Conservative federal Parliament. In 1876 there was a Liberal-Liberal combination. That may have had something to do with the method by which they followed through the procedure in their legislation.

Mr. Kellock: On Mr. Taylor's point and on Mr. Sterling's point, we did not refer expressly in the opinion to the Colonial Laws Validity Act of 1865. However this does have a bearing because that was in force until the Statute of Westminster in 1930. It generally provided that laws of this jurisdiction and all of Her Majesty's other colonies were void if repugnant to acts of the British Parliament. It dealt expressly with the power of colonial legislatures to define and amend their constitutions. The scope of that power was restricted, because it said "provided that such laws shall have been passed in such manner and form as may from time to time be required by any act of Parliament."

So I am not prepared to say that the Parliamentary Privileges Act of 1770 was taken to extend to this jurisdiction in 1876, but certainly the argument can be made that it did. If that is the case, then it is quite apparent that everybody here was worried about having the statute disallowed, not only in Ottawa, but at Westminster, because the British North America Act provides for that possibility.

Mr. J. A. Taylor: You're talking about a domestic law that would be repugnant to the British law. What we're talking about is a domestic law that is in accordance with a British law, namely, the British North America Act. In other words, presumably the jurisdiction would flow from that particular statute.

Mr. Kellock: If the provincial Legislature here sought in 1876 to give itself more privileges than the Parliamentary Privileges Act of 1770 would permit, that might have been void by virtue of the Colonial Laws Validity Act. That impediment was in place when this debate in 1876 took place.

Mr. J. A. Taylor: What I'm arguing, of course, is that the British North America Act of 1867, which is a British statute, could have—and I say this advisedly—could have given more powers to the provincial Legislature than an earlier act of Britain gave to its own House of Commons.

Mr. Kellock: If that was the case, then the statute of Westminster was unnecessary.

Mr. J. A. Taylor: That may be; I don't know.

Mrs. Scrivener: To follow that, isn't it significant that the original act as produced in 1875 was disallowed and had to be redone?

Mr. Kellock: In 1868.

Mrs. Scrivener: I'm sorry; yes, 1868. It had to be redone; so that, following on from what you have said, it sort of indicates again that it was accepted.

Mr. Bolan: Another thing about the section: Although it was passed in 1876, it was amended once to take out the word "debt." That's how it originally was framed; so, obviously, they've had some dealings with it. Obviously, the section was considered.

I further understand—and maybe Mr. MacDonald can correct me on this; he was around here in 1969 or 1970—that there was a review of the act at that time. Was there not? There was a committee that reviewed the act and certain sections of it. Do you recall anything about that, sir?

Mrs. Scrivener: Yes. I think they took out a clause that said you had to wear a hat in the Legislature once a year.

Mr. Bolan: Oh, I see.

Mr. Chairman: A massive review!

Mr. MacDonald: It dealt with frivolous issues.

Mr. Bolan: So, therefore, this was not considered frivolous and, as such, it was left in its entirety?

Mr. MacDonald: Mr. Chairman, I don't want to pursue this argument, but the substance of the argument as put forward by yourself and partially by Jim Taylor becomes valid only if you accept a certain interpretation of it, namely, that molestation continued to maintain the pre-1770 content. All I'm saying is that I think there are plenty of arguments to suggest that that is not the case. So your case is based on misinterpretation.

Mr. Bolan: Not at all. I am not at all saying that it's based on the interpretation of the word "molestation" as it existed back before 1770. All I'm saying is that when such action has the natural and probable effect of harassing, preventing, or seriously interfering with the member's discharge of his or her public responsibilities and when the subject matter of such action relates to public issues or concerns within the jurisdictional competence of the Ontario Legislature.

Mr. MacDonald: That latter one is a very broad one.

Mr. J. A. Taylor: The meaning of "molestation" is covered, I think, by statute and especially where the reference, of course, is to "any cause or matter whatever of a civil nature during a session of the Legislature or during the 20 days preceding or the 20 days following session."

Molestation in its pristine form, if I can put it that way, would really extinguish the right to bring the action, as I understand it; you couldn't bring the suit. We're not arguing, and I haven't argued, that the present section 38 extinguishes the right of bringing a suit. What I am saying is that if section 38 means anything, it means a deferral or a postponement of that suit during the session or 20 days preceding or following the session, which is quite different, of course, from eliminating a right of action.

Mr. MacDonald: And that postponement would take place when it got into court, after the writ had been served—the writ of supersedeas or whatever it is—to postpone any further processing of the case until after it was over. It never even got into court in this instance.

Mrs. Scrivener: But there was a reference to the debate which took place in the House originally to the effect that judges would put over cases until after a session; but, of course, those were the days when the sessions were so brief. There was no inconvenience. But that was their intent, I would think; that was the way they interpreted it.

Mr. J. A. Taylor: There was no need for it because of that.

Mrs. Scrivener: Yes. All we have now is a matter of evolution in terms of service after 100 years when now we sit by the month, not by the week.

Mr. J. A. Taylor: We have been talking about documentation. I wonder if counsel would include the service of a writ of summons or some sort of notice which would trigger a lawsuit; in other words, the scope of the documentation that would be prohibited from service during the session of the Legislature or the 20 days preceding or following the session.

In other words, assuming that section 38 meant something and that people couldn't happily be calling on their members, serving them with writs and so on, during the session —assuming that wasn't permitted and was contemplated by section 38—how far do you extend the type of legal document? Would it embrace a notice of intention to prosecute or would it embrace the type of documentation that was served on Mr. Riddell?

Mr. Kellock: You're asking me to accept a premise I don't agree with.

Mr. J. A. Taylor: I appreciate that.

Mr. Kellock: That causes me some difficulty. If there were a prohibition against commencement of civil proceedings, then certainly the initiating document, whether that is a writ of summons or an application to the labour relations board, would be evidence that that proceeding had been commenced in contravention of the privilege. I'm not at all sure that writing a letter saying that you intend to commence a proceeding would be a breach. Consequently, it really then depends on which side of the line or in which category you're prepared to place the notice of

intended action. I think there are arguments to be made on both sides.

Mr. J. A. Taylor: What concerns me is not the institution of the action, but the process of service with the command to enter an appearance, and the involvement then of the member in the legal process. I distinguish that from the action. As you know, a writ of summons might be issued and not served for six months or longer. It's on service of that that the recipient must respond to the command of the Queen to enter an appearance or what have you.

Mr. Kellock: That's right.

[1:30]

Mr. J. A. Taylor: It's that process which involves the time and occupation of the member that concerns me. I most certainly wouldn't argue that the right of action and the issuance of the writ itself should be eliminated.

Mr. Bolan: I can answer that if I may. I think it's right in the section, Mr. Taylor, where it says, "for any cause or matter whatever of a civil nature."

Mr. J. A. Taylor: Yes.

Mr. Bolan: As you know, to commence an action under the Libel and Slander Act a notice has to be served under section 5. That is a prerequisite to the institution or the commencement of the action and then you have 90 days after that to issue your writ of summons. There is a time-frame for the proposed defendant to respond to that particular notice of action and that is notice to him of some legal manoeuvre which is about to take place, so I would say in response to your question that it is covered in the words "for any cause or matter whatever of a civil nature."

Mr. J. A. Taylor: So you are saying that that type of documentation could be contemplated by section 38, and to serve that on a member during the session would be a breach of his privilege under section 38.

Mr. Bolan: Right. Only because it falls into the definition of "molestation."

Mr. J. A. Taylor: Yes, I understand that.

Mr. Bolan: He has every right to do it.

Mr. J. A. Taylor: That's implicit.

Mr. Bolan: Absolutely.

Mr. J. A. Taylor: What I have been trying to get at, of course, assuming the service of the writ of summons, not the issuance of summons but the service of that writ of summons on a member—the service of course bringing with it the command for the member to respond in some way, to make an appearance—is whether the documentation in the present case that was served would be tantamount to the same thing; and if so, presumably if the service of a writ of a summons on a member during the session would be a breach of his privileges, then of course the service of that notice of intention would be a breach of his privilege.

I understand that our legal counsel wouldn't agree that the service of a writ of summons would be a breach of the privilege under section 38, so the argument now becomes academic from our point of view, assuming that the legal opinion we have is correct.

Now, assuming the legal opinion we have is correct, what troubles me again is what section 38 means. Really, what protection is afforded a member of the Legislature from occupying his time and attention to defending himself in some legal process as opposed to performing his duties in the assembly? I would have thought that 38 would have deferred that legal process, not extinguished legal rights but deferred that legal process in order for the members of this assembly to perform their function.

If I understand what you say, then I am drawn irresistibly to the conclusion that section 38 really doesn't mean very much and affords very little protection if any in terms of a member being able to devote his time exclusively to the work of the House.

Mr. Chairman: We are now at that point, I guess, where I should be prepared to make a ruling on Mr. Bolan's motion.

Mr. Bolan: Before you rule on that motion which I presented earlier, I would say I am withdrawing that motion and I am substituting for it another motion, that motion being that this committee find that the member's privileges under section 38 have been breached.

Mr. Chairman: Perhaps the committee would be prepared to adjourn for 10 minutes to let me do a small amount of research on that.

The committee recessed for 20 minutes.

On resumption.

Mr. Chairman: The committee is called to order again. I have a motion from Mr. Bolan that the committee finds that the member's privileges with respect to section 38 of the Legislative Assembly Act have been breached. That motion is in order. Would you care to speak to your motion, Mr. Bolan?

Mr. Bolan: After hearing evidence for some two months, after hearing representations made by counsel on all sides and after

hearing all the members of the committee express their views, I am of the opinion that the member's privileges have been breached. I would ask the committee to adopt the resolution.

Mr. MacDonald: I will not support the motion and I won't support it for reasons which are spelled out satisfactorily for me in the letter that was submitted to the committee by our counsel, dated June 27, 1978.

Mr. Chairman: Are there any further speakers on the matter? Before you speak, I wonder if you would allow the chair to make some comments. I don't intend to vote on this unless there happens to be a tie. I think it would be appropriate, since we have all gone through a long and difficult exercise, to attempt to get the committee to focus on some things which are pertinent in my view and on which I think there is general agreement.

First of all, there have been some very interesting arguments about jurisdiction, which are not precisely before the committee but which certainly do play a part in whatever deliberations we might come to during the course of these hearings. It would be my view, the jurisdictional dispute notwithstanding, that we are left with a Legislative Assembly Act that may not be clear but is in place.

What is in question is the interpretation of that act and whether that applies specifically in that instance. I would remind the members of the committee that we are not rewriting the act at this moment, though we may be doing so at some subsequent date, but that we are dealing with a specific case that has been referred to us.

[2:00]

The matter of where privileges apply is probably the most pertinent and difficult one to deal with. There is the technical and somewhat legal argument specifically about whether members' offices are covered under the grounds upon which one could claim privilege. That matter, of course, is open to contention.

I guess the most difficult issue is to try to provide some interpretation of a rather old word, that of "molestation." We have heard varying views in the committee, and I would remind you that whatever your deliberations might be this afternoon, they will establish the precedent for the definition of that word. That's something that hasn't been done in probably 100 years and may not happen too much in the future.

I think it's clear that the term as originally proposed changed somewhat around 1770. It changed subsequent to that around the time that this Parliament passed its matter of privileges. I'm sure that when those members voted on that legislation, they had some concept of what "molestation" meant. In my own personal view I think that is reasonably clear now. Having heard arguments from all sides, I'm somewhere between Mr. Taylor's sometime proposition that it means you can't have civil suits; I think I go closer to his definition as he wound up his presentation to the committee this morning—and I notice that Mr. Bolan and, I think, all members of the committee and everyone who made representation to the committee, accepted the notion that we are not saying that privilege extends to the limit that you can't be held responsible for the things you say or do outside of this House, but that somewhere between that a judgment must be made as to what constitutes molestation.

I am uneasy about the quasi-criminal argument that has been put forward. It strikes me that I can give you a reasonable definition of "civil action" and a reasonable definition of "criminal action" and somewhere between there fall a number of things which are referred to on several occasions as 'quasi-criminal."

I hope it's not the intent of the committee to establish a precedent that says that anyone's civil rights are impeded, withdrawn, taken away from—and I sense throughout the course of the debate that that has been repeated again and again that you don't want to remove the rights of ordinary citizens to take civil action against the members. There is a problem which has been pointed out—and which we, at least in my view, would have some difficulty dealing with at this point in time—and that is the time extension problem of the 20 days before and 20 days after. It becomes apparent, just even at a superficial glance, that when the members sat in 1876 that was a very practical application. If you applied that now there would probably be something like a three-week period during the course of most years when such action could be taken. That does pose a problem.

I guess the difficult thing is to sort out all of this and to get down to the specific case that's been referred to the committee, and to judge by the facts that have been presented —and those are agreed upon—and what interpretation we will give to the existing statute. In my view, I can't make the distinction about when is a member a member. I think he or she is always a member. I don't see that you can separate that; I wish you could

sometimes, but I guess you can't. What can be separated is, when does a member have privilege and under what circumstances can he or she claim that privilege? That's a very sticky matter and that, of course, is the crux of the argument that's before us.

I go back to what I would consider to be the original concept of privilege and the reason for it. It's somewhat historical, I guess, in the sense that we don't get dragooned off to the Tower any more. But I think if there is validity in extending privilege to the members of this House, it is that they will not be interfered with in their actual work.

I don't think we want to extend it to include freedom from any kind of action against a member or, in my view, even—and I won't use the word "molestation"—harassment from constituents on various issues of the day. I think where the committee should properly draw the line is, where does a member get so hassled by whatever happens out there that he or she can no longer carry out the duties and the responsibilities as a member?

If there is validity in giving the members privilege it's simply this, that the member, when he or she sits in this House or carries out the function of this House, is not really active as an individual but as someone who represents a constituency. If we allow things to interfere with that, then of course that constituency has no voice as well as no vote. That's probably where privilege originated, and in my view where it should stay.

The question has been put to you rather succinctly whether or not in this specific case, under this existing legislation, a member's privilege has been breached. I would ask you if you can—and I know it is difficult—to set aside all of the legal arguments that might be there, because you are not sitting here as a panel of lawyers but you are sitting here as members of this House, as peers, to make that judgement. I would hope that you would make it on the basis of whether or not you feel personally and individually as a member of this House that a fellow member has had privilege breached. That is precisely the motion that is before you. Are you ready for a vote?

Mr. Bolan has moved that the committee find that the member's privilege with respect to section 38 of the Legislative Assembly Act have been breached.

Those in favour of that motion please indicate.

Those opposed please indicate.

I declare the motion carried.

Motion agreed to.

Mr. Chairman: Having found that, would it be appropriate to expand that by going through the four issues or does it suffice to leave it at that? That is the crucial question of course. The committee has recommended to the House that privilege has been breached. There are other matters which should be dealt with by the committee.

Mr. J. A. Taylor: This whole area should be clarified. It worries me that the law is as susceptible to as many interpretations as it obviously has been. That would lead people to all kinds of conclusions that don't necessarily follow. Our recommendation should include a recommendation for a clarification of this particular section. It might be helpful if we could be somewhat specific in the type of privilege that we feel is contemplated by this section. It might better be manifested in statute than to leave it to the type of general interpretation that we have had to consider.

It worries me that there could be a spin-off from a decision such as this, whereby a person's right of action may not be extinguished, but a delay in the process could be a denial of the process. We haven't pursued that; certainly I haven't in the subject instance. I don't know what the ramifications of this decision will be in practical terms in regard to the intended lawsuit that is under way.

We have proscription periods that are now provided for in our statutes which could be jeopardized, if we leave the law the way it is and interpret the section of the Legislative Assembly Act the way we have. I feel that some of these proscription periods and provisions in statutes may have been made, oblivious to the ramifications and interpretation of the Legislative Assembly Act. Therefore, I think it would be helpful if this committee could specify, I think in some detail, the recommendations that should be made, not only in connection with the Legislative Assembly Act, but the areas of pursuit that may flow from that in other statutes.

Examples have been given by legal counsel and members of this committee that legitimate cases may be frustrated and that justice may even be denied if the service of legal documents cannot be effected while the House is in session or within 20 days prior to or after the session.

I want to make it amply clear that the decision of the committee is not to try to create an elitist club with protection and privileges not afforded the ordinary citizen but to enable the democratic process not to be frustrated through actions which may be

legitimate or illegitimate and which could accomplish that purpose if a member's privilege of dedicating himself to the work of the House is not permitted.

Mr. MacDonald: Mr. Chairman, I acknowledge the decision is being made by the committee, and I'm not quarrelling with it, although I differ with it.

I would agree with Mr. Taylor that it's not only useful, but it is also absolutely necessary, that this committee should isolate those areas that need to be clarified. I don't know that we can do it here now after having sat for some four hours already.

Is it a feasible proposition to consider that the report to the House shall be basically the motion which has just now been passed with (a) a statement prepared by our counsel of those areas which need clarification and (b) three appendices by way of guidance; namely, the letter which our counsel wrote to us on June 27; the statement that was submitted initially by way of resolution this morning by Mr. Bolan; and the Hansard for today, because that would incorporate Jim Taylor's views, which are not wholly in agreement with what Mike Bolan has presented. I think those three documents will encompass virtually all the arguments we have heard during the course of all the committee hearings.

Therefore, it would seem to me that we could have a report which is, briefly, the majority view of the committee that the privileges haven't been breached but that there are three or four areas that should be clarified—which, I presume, means a reconsideration of the Legislative Assembly Act, or section 38 of it, or perhaps other sections of it—and, by way of guidance, the three appendices: our counsel's letter, Mr. Bolan's resolution of this morning and today's Hansard, which incorporates a lot of other views that were put in but, primarily, Mr. Taylor's rather extended analysis.

Mrs. Scrivener: Mr. Chairman, I think that's a good proposal.

Mr. Kellock: Could I comment on that, Mr. Chairman? In view of the fact that I seem to be the one who will be responsible for preparing the statement of issues—

Mrs. Scrivener: You might want to hear my view before you respond. The point I was going to make to you, Mr. Chairman, was that while not every member is going to concur with every point you made in your remarks to us before we took the vote, I would think the greatest number of your points are acceptable to most members of this committee. You made some very succinct points. Perhaps that could be taken into account by our counsel when he's doing his preparation, because I think you did sort of distil a lot of the points at which we have finally arrived and which have arisen from various witnesses and comments and arguments that we have been engaged in. I also think that our submission to the Legislature should be fairly brief; it should, as Mr. MacDonald suggested, lead off with the motion, followed by the three appendices, and then perhaps make a fairly clear recommendation to the Legislature of the areas which need to be reviewed.

[2:15]

Mr. Kellock: If I may, Mr. Chairman, the statement of facts, which I understood was endorsed by the committee, distils four issues out of the statement of the facts; and it does not appear from the motion whether those who were moved to vote in favour voted in favour because of (a), because of (b), because of (c), because of (d); and that, with the greatest of respect, makes the report somewhat difficult to deal with and certainly would make the preparation of a statement of the areas that need clarification extremely difficult. If I know that all those in favour of the motion were voting, for example, only on (c) and would negative breach of privilege with respect to (a), (b) and (d), that would be of great assistance to me.

Mrs. Scrivener: Why should we need to? Why do we need to?

Mr. Bolan: It's just whether or not there has been a breach.

Mrs. Scrivener: What you want is to support your statement with a lot more argument, and I don't think we want that.

Mr. Kellock: No no. I don't know whether to say that section 93 ought to be clarified, because I don't know whether anybody voted in favour of the motion because they thought that privilege had been breached because of the place of service as distinct from the nature of the service.

Mrs. Scrivener: This is the point, you see, where I think there is a lot of disagreement. There are different opinions and the chairman made these points. The chairman expressed, for instance, his personal opinion, I think, about whether it's quasi-criminal or not. But I would think that perhaps that is something that our Attorney General (Mr. McMurtry) has to dig into a little bit and come back to us on. I think we haven't resolved this matter of what is civil and what

is quasi-criminal satisfactorily. I think the whole matter of what is within the Speaker's jurisdiction is certainly up in the air. I don't think you can get a consensus from the committee on these matters.

Mr. Sterling: Mr. Chairman, the only thing I would say is I think it is a rather hollow decision as it now stands in terms of really knowing what we have decided. Four people in this room have decided that there is a breach of privilege, and I accept that, but I don't know why they have decided that. We have gone through two months together and, quite frankly, I think that we should try to distil for the Legislature exactly on what basis we are bringing this down. Otherwise, how is the Legislature going to know how to react to our decisions?

Mr. Chairman: Part of the difficulty we have here is that it would have been in my view preferable to proceed with the issues as laid out by our counsel, to vote on those, and wound up with a motion such as proposed by Mr. Bolan. That would have said roughly that we have expressed an opinion on these issues as stated by our counsel, and ultimately we have arrived at a decision that, yes, a breach has occurred. We chose to go the other way around, which poses some difficulty.

I think what counsel is trying to point out to the members of the committee is that if you want recommendations on specific parts of the act we think should be changed, we will have to provide some guidance in that regard.

As Mrs. Scrivener has just pointed out, there is certainly a divergence of opinion in the committee. The only way you can seek out where the opinion differs is to read the Hansards of two months of work. I don't propose that many members of this House are going to do that. If in the final draft that is presented to the House you want to be specific in terms of which sections of which act are to be altered, and what specific recommendations we must make in that regard, you had better provide us with some guidance. Otherwise, you will simply get a series of annotations that say that this is one of the areas where there was a divergence of opinion and it seems unclear. You now have to decide that.

Mr. Bolan: As a suggestion, perhaps we could say, if you look at paragraph 47 in your letter, Mr. Kellock: "That the commencement of the two proceedings in question, as well as the resulting delivery of documents constitutes the breach of section 38" of the act. In other words, this is precisely what you have in paragraph 47, except for taking out the word "not," so you have what lays out what amounts to the breach. It is the commencement of these two proceedings as well as the delivery of the documents related to the two proceedings which constitute the breach.

And while I let you think about that for 15 or 20 seconds, I suggest we put in something else there to the effect that, in spite of the fact that there is a breach of privilege, no further action be taken by the Legislature as against the party or parties who were found to be in breach. I think there has to be something there—in other words, that we make no recommendation that the breach of privilege be punished. I think that also should be quite explicit.

Mr. MacDonald: I think that latter point is valid because you may recall that when the Speaker commented in an interim fashion, it appeared to him perhaps to be a prima facie case for a breach, but in any case the matter rests with the House. We don't indicate clearly that there should be further action. I suppose it goes by default because we haven't indicated further action, but surely it is wise that, if it is the majority view of the committee that there should not be further action, we should say so.

Mr. Chairman: Could I have a motion to that effect?

Mr. Haggerty: Mr. Bolan has stated that in his original motion this morning on page 15.

Mr. MacDonald: Could that be added to Mr. Bolan's original motion?

Mr. Haggerty: He said, "The committee is persuaded, however, that no further action by the Legislature would be appropriate at this time. As already noted in this report, the present reference appears to be the first occasion in which the term molestation in section 38 has had to be examined."

It goes on to say, "These are circumstances which militate against a recommendation that the Legislature take no punitive action."

Mr. Chairman: Could I have a motion to that effect then?

Mr. J. A. Taylor: Just to clarify that motion: what is the substance of the motion?

Mr. Chairman: That no punitive action be taken.

Mr. MacDonald: It doesn't have to be punitive, does it? Does the word "punitive" have to be in there?

Mr. Bolan: No.

Mr. Chairman: No further action be taken by the House? Is that your motion, Mr. Bolan?

Mr. Bolan: Right.

Mrs. Scrivener: Some of the language contained in Mr. Bolan's statement on page 15 is quite appropriate.

Mr. MacDonald: I would suggest, Mr. Chairman, that Mr. Bolan word what he wants to add to his original motion, because I think it is an integral part of the original motion.

Mr. Bolan: What if you adopt the last paragraph on page 15 of my report?

Mrs. Scrivener: Yes.

Mr. Bolan: That sets out fully the fact that this committee is persuaded that no further action by the Legislature would be appropriate at this time.

Mr. Chairman: So you are moving what you had previously put in as the last paragraph on page 15. I will read it into the record:

"The committee is persuaded, however, that no further action by the Legislature would be appropriate at this time. As already noted in this report, the present reference appears to be the first occasion in which the term molestation in section 38 has had to be examined. While asserting that its interpretation of the law is sound, the committee is bound to recognize it may also seem novel to others. These are circumstances which militate against a recommendation that the Legislature take punitive action. Those responsible for the actions complained of by the member for Huron-Middlesex testified before the committee that they intended no breach of his privilege and insisted they took action against him 'strictly as a private citizen.'

"On this last point, the committee declares its scepticism and, for the reason given in this report, rejects the argument. As to intention, however, this committee believes there is a recommendation that the breach of privilege should be punished."

Mr. Kellock: There are no reasons in the report.

Mrs. Scrivener: I think perhaps that has been pencilled out.

Mr. MacDonald: "As already noted in this report" in the third line is not necessary.

Mr. Bolan: Oh I see, yes.

Mrs. Scrivener: Just "The present reference appears to be—"

Mr. Bolan: Okay.

Mrs. Scrivener: I think that seems to put the case, because it's very similar to the kinds of things you were saying too, Mr. Chairman.

Mr. J. A. Taylor: If what we are really saying is that the action was innocent on the part of the litigants and there wasn't any intention to violate a privilege of a member then—

Mr. MacDonald: If this is part of the original motion, I think I am off the hook that I see myself getting onto. For example, if this gets added to the original motion—

Mr. J. A. Taylor: Which is the original motion?

Mr. MacDonald: The original motion was that there was a breach of privilege.

Mr. J. A. Taylor: All right. I don't see this as an addition to the original motion.

Mr. Chairman: No, I see it as a new motion.

Mr. J. A. Taylor: Surely there must be a fresh motion then.

What I suggested and what I think we should do is give some constructive and concrete guidance to the Speaker and the law officers of this province to effect the necessary reform in the law where warranted. That's all I am saying, and if that's agreeable that's the type of a recommendation I would like to see.

I was hoping we could be more helpful in specifying the areas of particular concern to this committee, because we have grappled with them. It has tormented us—certainly me—in regard to the interpretation of the current law and how that might be a violation of a member's privilege. If we as a committee don't feel we can be helpful in that regard, then I don't know who could be.

I would suggest that as a result of these deliberations something could be brought forward by our staff that would pinpoint the areas of concern we felt needed clarification. We would then look at that document again as a basis for the recommendation and either agree or otherwise. But for us to try and settle those matters now I think would be an exercise in frustration and possible futility.

Mr. Chairman: Okay. I would like to make it clear, Mr. Bolan, whether you wish to put forward a formal motion on the matter of punitive action. If so, what is the precise wording of that motion?

Mr. Bolan: The recommendation should be as set out in the last paragraph of page 15. Is there anything unreasonable about that?

Mr. MacDonald: Yes.

Mr. Bolan: Okay, what is it?

Mr. MacDonald: Can I speak to that, Mr. Chairman?

Mr. Chairman: You don't want to put a motion just—

Mr. Bolan: There is a motion which has been accepted.

Mr. MacDonald: What do you suggest for a revision of it?

Mr. Bolan: No, no. The next step which we must take is to determine whether or not punitive action should be taken because somebody breached the member's privileges. I say on that point that no punitive action be taken with respect to the breach of privilege. That's what I am saying.

Mr. Chairman: Could I ask you to write that out and hand it to me as a formal motion? That's in case there's any argument.

Mr. Bolan: What about the paragraph 15, Don, that you—

Mr. MacDonald: It has some editorializing and I don't want to get into the argument. But may I suggest that in my view all we need at the moment is (a) what you said and (b) what Jim said—namely, that the committee recommends that no further action by the Legislature would be appropriate at this time; but it recommends—and what was your phraseology, Jim?

Mr. Bolan: I have that on page 13, the last paragraph: "The committee recommends that the Legislature request the law officers of the crown to examine the Limitations Act and other statutes containing time limitations on civil actions against persons with a view to recommending such legislative remedies as may be required to reconcile such limitations."

Mr. MacDonald: Let me just give you a generalization that will, I think, cover that.

Mr. Bolan: Okay.

Mr. MacDonald: I think it is broader than that. Jim used the phraseology that the Legislature recommends "the law officers of the crown review all of the appropriate legislation with a view to bringing it up to date—"

Mr. Bolan: Or to safeguarding the individual's right.

Mr. MacDonald: To safeguard the individuals. Those two sentences: that there's no further action to be taken, and that this should be done. Then you might put at the end something about clarifying the areas of concern. We hope our counsel will prepare this. It is a little untidy but I think the intent is clear.

Mr. Sterling: Mr. Chairman, I want to place before the committee four motions dealing with the four issues that were placed before us in terms of the report. I'd like to put each of those motions before the committee for a vote, so we can determine exactly where the breach of privilege did lie.

Mr. Haggerty: That's going to rehash the whole thing all over again.

Mr. Chairman: If you want to move a motion in here, hand it to me in writing and sign it, and that will constitute a motion.

I don't have yours.

[2:30]

Mr. Bolan: Do you have my motion?

Mr. Chairman: I have your original one on section 38.

Mr. Haggerty: It's not a motion; it's a recommendation.

Mr. Bolan: It's not a motion, just a recommendation.

Mr. Haggerty: It is just a recommendation to the committee for further review of all legislation pertaining to section 38 and to the Limitations Act.

Mrs. Scrivener: If we have two motions—one, that a breach of privileges has occurred and, two, that no punitive action be taken—I think that's adequate. The rest can be put in the form of a recommendation to the Legislature as to what reviews are required.

Mr. Chairman: I would agree, but I have one motion which we have voted on and I don't have a subsequent motion.

Mrs. Scrivener: In terms of punitive action, I assume that Mr. Bolan is writing a motion now. The first half of the last paragraph on page 15, which stops right in the middle, just says, "These are circumstances which militate against a recommendation of the Legislature to take punitive action." That's all that's required.

Mr. MacDonald: Mr. Bolan is going to make this motion, but my view would be that we not get into what is at bottom of 13 because there are other matters we want to have reviewed. Those are the areas of concern. They are not necessarily included in the review of the Limitations Act and other statutes. We're really not at cross-purposes. It's really just a matter of words.

Mr. Chairman: I would point out that when we started asking for motions I wanted the direction to the counsel to prepare a report to be as clear as can be. In that regard, I am insisting on formal motions in writing. I have five motions in that regard. I will put the motion by Mr. Bolan first.

Mr. Bolan moves that the committee is persuaded that no action by the Legislature would be appropriate at this time.

Mr. MacDonald: "Is persuaded" or "recommends"?

Mr. Haggerty: "Recommends" would be better.

Mr. Bolan: "Recommends." Would you object to striking the words "at this time" from the motion?

Mrs. Scrivener: No.

Mr. Chairman: The wording of the motion by Mr. Bolan is as follows: 'The committee recommends that no further action by the Legislature would be appropriate."

Mrs. Scrivener: "Is appropriate."

Mr. Chairman: "Would be appropriate" is the way it reads. Any more comment?

Those in favour of the motion?

Those opposed?

Motion agreed to.

Mr. Chairman: Next is the motion by Mr. Sterling.

Mr. Sterling moves that the service of the notice of intended action, dated March 15, 1978, by delivering a copy thereof to the secretary to the member for Huron-Middlesex at his office in the main legislative building, 121 north wing, and that further service by mail of other material related to that action does not constitute a contempt of the assembly or an interference with parliamentary privilege.

Mr. MacDonald: On a point of order: The motion should be positive, not negative. Then you may switch your vote. It shall say "does constitute," and then you can vote as you wish.

Mr. Chairman: Yes, I think I agree with that. With that alteration, the motion is in order.

Mr. Sterling: My problem now is that one member of the committee has left and the significance is lost in determining exactly which way the committee feels on these different issues.

Mrs. Scrivener: Mr. Taylor had to go to Trenton. I don't think he foresaw there would be any additional motions.

Mr. Haggerty: It's actually an amendment to the original motion.

Mr. Chairman: With the wording, it's not properly an amendment; it's an elaboration on the reasons why the members may have taken a previous position.

Mr. Bolan: With one of the members not here, it's very difficult to deal with it, specifically when you get to the motion which will relate to the actual service of the documents and the commencement of the action being the breach.

Mr. MacDonald: In view of Jim Taylor's vote, obviously he is going to vote—

Mr. Bolan: But he is not here.

Mr. MacDonald: I know. I agree.

Mr. Chairman: I have a motion that is properly before me; the motion is in writing; we obviously have a quorum. The motion is thoroughly in order, and I am going to ask for debate on this motion.

There being no one wishing to debate, I will call the vote on the matter.

Mrs. Scrivener: Mr. Chairman, it seems to me, and maybe Mr. Sterling can comment on this, that Mr. Sterling's purpose was to try to pinpoint the areas of argument that we have been reviewing at this time. That preamble I think is unfortunate in the face of what has gone before and the length of discussion that has gone before, and I think that perhaps he would like to reword his motion if he wants to make it in the form of a motion. For myself, as others have said here, I would much rather have simply seen it placed as a recommendation to the Legislature that these matters be weighed and reviewed with the notion that we will amend the act.

Mr. Haggerty: There is no doubt this would be further discussed or debated in the Legislature.

Mr. Chairman: No, there is considerable doubt.

Mr. Haggerty: We don't know that. I imagine it would be.

Mr. Chairman: First of all we have to point out the obvious: the thing will be tabled with the Clerk, not with the House, and the first opportunity would be when the House reconvenes. Secondly, as laid out previously, the traditions are that where you find there has been a breach, and you do not recommend punitive action, the House does not debate it.

Mr. Sterling: Mr. Chairman, I am going to withdraw all four motions at this time.

Mr. Chairman: The motions have been withdrawn. Are there further motions?

Mr. MacDonald: I am back to the problem that our counsel has and I don't know whether I can resolve it. If I were faced with the problem I would resolve it this way. You now know what the decision of the committee is.

Mr. Kellock: I don't.

Mr. Sterling: That's the problem.

Mr. Kellock: I have no idea what the committee decided.

Mr. MacDonald: You know what the overall decision of the committee was, that there was a breach of privilege.

Mr. Kellock: That's right.

Mr. Sterling: He has no way to write a report, that's his problem. He can write two lines of the report—

Mr. MacDonald: We are not asking him to write a report, as I understand it; what we are asking him to do is to clarify those areas which should be examined in any review of the Legislature.

Mr. Kellock: Can I put my problem to the committee this way. It was my understanding that pages one to eight of the document entitled Draft Report of the Committee on Procedural Affairs—For Discussion Only, dated June 22, 1978, were accepted. No formal motion was put or passed.

Mr. Chairman: That's right.

Mr. Kellock: I have been proceeding on the footing that that starts it off.

The next item that would then appear on what is now page eight is a statement of the burden of the two motions; that the committee has found there has been a breach of privilege, and that the committee recommends no further action be taken, period.

It was suggested by Mr. MacDonald, and I made a note, that there should be appended to the report, my opinion, Mr. Bolan's document, and Hansard for today, together with a statement of the areas that need clarification. For example, it might be said that the problem with respect to what areas of the House are under the Speaker's jurisdiction can be remedied very simply, and that is simply by publishing an order in council; or it might be thought that section 93 ought to be changed; or it might be thought that some more definitive statement of privilege than occurs in section 52, which simply allows inherent privilege to exist, should be spelled out and some statement made as to what is and what is not properly done within the precincts of the House—I don't know.

It was also raised in the draft statement of facts and the issues whether or not there was any other reason, other than section 38 or the precincts-of-the-House argument, to conclude that a breach of privilege had occurred here. There was a live issue at one point as to whether or not what was said by the member for Huron-Middelesex was protected under the Roman versus Trudeau doctrine. That is a subject matter which will be included in question (d) on page eight. I don't know whether any of the members who voted in favour of Mr. Bolan's motion thought there was a breach of privilege under subsection (d).

So I don't have much difficulty in indicating those areas that need clarification with respect to the construction to be placed on section 38 itself, but in those two other areas, I'm really at sea.

Mrs. Scrivener: Mr. Chairman, I don't really see that there is such a problem inasmuch as we have this very scholarly piece that Mr. Kellock wrote for us in the first instance and that is to be an appendix and that's going to become a very important reference paper, I would think, for members of the Legislature.

We do have a motion, and I think we should back off from the legalese with writing a report which is substantiated as a legal document and take another run at it and write it simply as a reflection of the problem that this committee has dealt with and how it has dealt with it. As I hark back now, for the third time, to your preliminary statement to us before we took the vote on the first motion, that, to me, was quite a succinct summation; it was a real distillation of the kind of problem that we had before us and obviously a great part of it was not resolved.

I have no objection to that point being made clearly in the counsel's report. Then, if the points that we could not resolve were touched upon, I don't even think counsel has to support so much of it with argument because so much of it is already covered in the argument. But in any case, I think our report should be really quite simple, fairly short—there is going to be enough paper to read anyway—and should simply bear our motions, point out our struggles and the areas of contention that have to be rationalized.

Mr. Sterling: Mr. Chairman, the only thing I feel really sorry about is that I think we've gone through very useful discussions here in this committee and probably have delved into the question of privilege, about whether or not MPPs are immune from civil actions, whether we're immune from service of documents, whether we're immune from only certain types of civil actions, et cetera. I think it's unfortunate that we're going to lose the decision of this committee in terms of what, in fact, was decided on those very key issues.

How is the Legislature going to know which way to turn in terms of changing that section around if it so desires? To say that there's a breach of privilege is all fine, dandy and simple. We have said there is not going

to be any punitive action, that's fine, so our two months of basically searching into this whole question of privilege has merely gone out the door in terms of coming to some definitive resolution of the problem and mapping out a future course for the Legislature. I think it's a shame.

I would move that we adjourn this meeting until we meet on September 18 and we can take the matter up again at that point in time, if we cannot meet before that time.

Mr. Chairman: This is highly improper not to recognize the motion to adjourn, but I have to point out to you that the committee will not be constituted by the same people on that date. We have no authority to sit between now and then and, in my view, it's impossible to do so. I can't rule an adjournment out of order, that's for sure, but I think you should be mindful of those things.

Mr. MacDonald: How many changes in committee personnel are there?

Mr. Chairman: There will be three.

Mr. Sterling: The only thing that I have to say, Mr. Chairman, in not going to that suggestion is basically we've got everything to gain and nothing to lose by going to September 18. Basically, what we're turning in here is a report to the Legislature which is going to be virtually useless.

[2:45]

Mrs. Scrivener: Oh, come on.

Mr. Sterling: It really is. We will have the opinion of counsel, we will have the opinion of Mr. Bolan, and we will have the report of our debate. But we don't know where the thrust is going.

Mrs. Scrivener: We haven't been taking this—

Mr. Chairman: Might I suggest an alternative to you? That is, before we adjourn, you move that this matter of privilege—not this specific matter, but the matter of members' privilege—be reviewed and that the appropriate legislation be reviewed. It could be reviewed by this committee or by the Attorney General's office—it could be reviewed by anyone—but that we deal with it in that manner.

If anything, the committee has certainly found that it needs to be reviewed and clarified. I would agree with Mr. Sterling that it's going to be very difficult for the committee to make what specific recommendations it might without going through some of the propositions that he put before us. I don't see how the counsel can now sit down and draft a report and say it should be altered in this way. This committee hasn't expressed a formal opinion in that regard. Only through the Hansards have you done that.

Mr. MacDonald: As a footnote to that, granted the circumstances we now find ourselves in, whoever is going to do the review will read the three documents—our counsel's letter, Mike Bolan's thing, plus the Hansard of today. Anybody who reads that—and he's going to read it anyway—will see the areas of concern and it's hoped he will grapple with each one of them. That gets the counsel off the hook of trying to spell them out.

Mr. Chairman: It won't happen unless the committee moves a motion recommending that the review take place.

Mrs. Scrivener: I would think that Mr. MacDonald had extended to Mr. Bolan—

Mr. Chairman: No, that's why I'm asking for motions.

Mrs. Scrivener: When he made his comments I said I concurred and supported them, and I thought that was what he was doing.

Mr. Kellock: Mr. Chairman, can I recommend at a very minimum that there be a motion that the report of this committee shall consist of—something?

Mr. Chairman: Yes, if I might just review that for you now: Let me point out to you what the committee has determined the report will consist of to date. The committee agreed at Tuesday's meeting that it will first have printed a summary of the findings, which is now in the form of two quite brief motions. It will consist of a statement of facts, which as Mr. Kellock has pointed out was tabled with the committee in the form of a draft report. That's also a part of the report.

We have agreed that Mr. Bolan's submission, the June 27 submission of Mr. Kellock and the Hansard of today, June 29, that those three matters will be appended to the report. Those have been agreed upon.

We had previously agreed that precedents that were quoted before by our own counsel would be embellished and would be appended as well. That will also constitute a portion of the report.

The area in question specifically now is the matter of related issues to the matter of privilege. We have not done that in a specific way. But only in a very general way. The counsel is saying—and I would concur with him—that it would be very difficult for him to write those recommendations in a specific form without the committee having given him direction.

Mrs. Scrivener: We did not have a concurrence.

Mr. Chairman: We didn't have a concurrence. We didn't have votes—

Mrs. Scrivener: In all our debate we have not had a concurrence. Surely the thrust of the comments to the chair, coming to you from different sources, has been that there has to be a review. That is the recommendation of these particular points.

Mr. Chairman: What's in order then is that someone in the committee must propose that we report and recommend a thorough review of not only section 38, but all legislation dealing with members' privileges.

Mr. MacDonald: So moved.

Mrs. Scrivener: Seconded.

Mr. Chairman: Mr. MacDonald moves for a review. Are you withholding your motion to adjourn until we deal with—

Mr. MacDonald: Just one moment. Do we want to indicate who does this review?

Mrs. Scrivener: I thought about that. Before the meeting commenced after the recess, I heard the chairman say that Rod Lewis is reviewing—

Mr. MacDonald: He's reviewing the rules of the House.

Mr. Chairman: Those are the standing orders.

Mrs. Scrivener: Oh, I beg your pardon.

Mr. MacDonald: I raise the question as to whether or not we want to say specifically or whether we want to leave it vague, that the officers of the crown deal with this in the first instance and they come back to this committee.

Mr. Chairman: I would think that in order to be of any use at all it should be specific in recommending who does the review and where the review goes after that. It seems logical to me that you would be asking the officers of the crown to conduct a review.

Mr. MacDonald: I would alter my motion that the review of whatever you said—

Mr. Chairman: All legislation dealing with members' privileges.

Mr. MacDonald: —that all legislation dealing with members' provileges be reviewed by the law officers of the crown and that their working paper be presented to this committee—

Mrs. Scrivener: Dealing with members' privileges.

Mr. MacDonald: Yes. That's what the working paper is going to deal with.

Mr. Chairman: And that it be presented to this committee—

Mr. MacDonald: —for further consideration and report to the House next fall.

Mrs. Scrivener: But that doesn't cover two of the points; the matter of jurisdiction over space and the matter of quasi-criminal proceedings.

Mr. Chairman: Yes, it does. To this committee during the fall session?

Mr. MacDonald: Yes.

Mrs. Scrivener: Does it include quasi-criminal proceedings?

Mr. Chairman: Yes, everything.

Mr. MacDonald: Can you read my motion now, Mr. Chairman?

Mr. Chairman: Basically, it is "that a review of all legislation dealing with members' privileges be conducted by the law officers of the crown and that it be presented to this committee during the fall session."

Mr. MacDonald: For further consideration and report to the House.

Mr. Sterling: I would like to speak in opposition to the motion, basically on the grounds that I feel this committee is in a position now to make a determination as to what to do with section 38 and make recommendations to the Legislature. I feel that that should be done with no further legal advice regarding the section. We have gone into it in extreme depth. I don't believe any other committee could go into it at any further depth, and I think we are in a position to make a recommendation relating to that particular section at this particular time. That's my feeling. All we are going to do is to create another study and we are going to create more work for more people—

Mr. Haggerty: But there are other areas of privileges that relate to different statutes. I think that's what Mr. MacDonald is trying to get at. Apparently, it also relates to privileges that are not under statutes that should be looked at.

Mr. MacDonald: I appreciate the comment. The only thing I would add is I think we might be able to make a decision on section 38, but that is only one part of a whole broad range. My motion covers all legislation having to do with the privileges of members.

Mr. Chairman: You have heard the motion. Is there further discussion on the motion?

Mrs. Scrivener: Could we hear the motion again?

Mr. Chairman: I knew you'd say that. "That a review be conducted of all legislation dealing with members' privileges by the

law officers of the crown, and that it be presented to this committee during the fall session for report and recommendation to the House."

Mrs. Scrivener: The recommendation from the law officers?

Mr. Chairman: Would come to this committee and then we would subsequently report and recommend—

Mr. MacDonald: For further consideration and report to the House.

Mrs. Scrivener: So, really, this committee would be making two reports; but one is specific, and one is general, in terms of the rules themselves.

Mr. Chairman: That's correct.

All those in favour of Mr. MacDonald's motion will please so signify.

All those opposed will so signify.

Motion agreed to.

Mr. Chairman: Hold on. Let me get it clear. You now have decided that the committee will report its findings. We will report the draft statement that is before the committee, the statement of facts; you will include in the report to the House the precedents that were quoted, the June 27 letter from our own solicitor, the report that was tabled in the committee today by Mr. Bolan, and the Hansard of today; and we are further reporting, requesting a review. That will be the sum and substance of the report.

Mrs. Scrivener: When is it likely to be ready?

Mr. Chairman: That's what I want to deal with. I need to know now, as I would deem it that the committee has decided on the matter that the report will simply be editorialized, if you like, by our staff and could be signed individually by the members. I would need to know in short order, are there members of the committee who wish to present a dissenting opinion, a minority report, whatever you would like to call it?

Mr. MacDonald: I have already indicated that I have a dissenting opinion. I indicated it at the vote and said that my dissenting opinion is embodied in the June 27 letter to this committee by our counsel.

Mr. Chairman: Okay.

Mr. Grande: As far as I am concerned, it also applies to myself regarding that letter.

Mr. Chairman: Okay, I will leave it like this. Anyone who wishes to add a dissenting opinion, minority report or whatever, has the obligation on himself to provide that information to our legislative counsel by Tuesday of next week. Is that agreed? Other than that, the report will be finalized. The members will be asked to sign that report and it will be tabled by the Clerk of the House.

Mr. Sterling: Mr. Chairman, before we rise is there any possibility of having a discussion in relation to section 38 as to the way this committee feels after going through this process and a recommendation to the Legislature of a change to that section? Do you think it would be a worthwhile discussion to take place at this time? I know it's late in the day.

Mr. Chairman: Let me take a straw vote among the committee. Are you prepared to entertain discussions on the specifics of section 38?

Mr. MacDonald: I have already expressed my view that I agree that is an important part of it, but I think it's part of the whole review that we have set.

Mr. Chairman: Those in favour of that suggestion? Those opposed to that motion? I guess not.

Thank you very much for your deliberations on this matter. One subsequent area that we will do when we do the review of the standing orders of the House is in my view to give considerable thought to how such matters of privilege are dealt with by the committee. I am not convinced that we have dealt with them as expeditiously as we ought to have. That is in the standing orders and in our review of those in the fall we might take some action in that regard.

The committee adjourned at 2:57 p.m. until September 19.

SPEAKERS IN THIS ISSUE

Bolan, M. (Nipissing L)
Breaugh, M.; Chairman (Oshawa NDP)
Grande, A. (Oakwood NDP)
Haggerty, R. (Erie L)
MacDonald, D. C. (York South NDP)
Scrivener, M. (St. David PC)
Sterling, N. W. (Carleton-Grenville PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Assisting the Committee:
Kellock, B. H., Counsel for the Committee

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